

No. _____

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

ELIM ROMANIAN PENTECOSTAL CHURCH,
and LOGOS BAPTIST MINISTRIEES

Petitioners

v.

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

Respondent

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

APPENDIX

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In the
United States Court of Appeals
For the Seventh Circuit

No. 20-1811

ELIM ROMANIAN PENTECOSTAL CHURCH and LOGOS BAPTIST
MINISTRIES,

Plaintiffs-Appellants,

v.

JAY ROBERT PRITZKER, Governor of Illinois,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 20 C 2782 — **Robert W. Gettleman**, *Judge*.

ARGUED JUNE 12, 2020 — DECIDED JUNE 16, 2020

Before EASTERBROOK, KANNE, and HAMILTON, *Circuit
Judges*.

EASTERBROOK, *Circuit Judge*. Two churches contend, in this suit under 42 U.S.C. §1983, that an executive order limiting the size of public assemblies (including religious services) to ten persons violates their rights under the Free Exercise Clause of the First Amendment, applied to the states

by the Fourteenth Amendment. The Governor of Illinois issued this order to reduce transmission of the coronavirus SARS-CoV-2, which causes the disease COVID-19. The disease is readily transmissible and has caused a global pandemic. As of June 16, 2020, 133,639 persons in Illinois have tested positive for COVID-19, and 6,398 of these have died. Epidemiologists believe that those numbers are undercounts—persons with no or mild symptoms may not be tested, some people die of the disease without being tested, and some deaths attributed to other causes may have been hastened or facilitated by the effect of COVID-19 weakening the immune system or particular organs.

Experts think that, without controls, each infected person will infect two to three others, causing an exponential growth in the number of cases. Because many of those cases require intensive medical care, infections could overwhelm the medical system. The World Health Organization, the Centers for Disease Control, and many epidemiologists recommend limiting the maximum size of gatherings (the Governor's cap of ten comes from a CDC recommendation), adopting a policy of social distancing (everyone staying at least six feet away from anyone not living in the same household—ten feet if the other person is singing or talking loudly), isolating people who have the disease, wearing face coverings so that people who have the disease but don't know it are less likely to infect others, and tracing the contacts of those who test positive. Reducing the number of people at gatherings protects those persons, and perhaps more important it protects others not at the gathering from disease transmitted by persons who contract COVID-19 by attending a gathering that includes infected persons.

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Plaintiffs contend, however, that a limit of ten persons effectively forecloses their in-person religious services, even though they are free to hold multiple ten-person services every week, and that the Governor's proposed alternatives—services over the Internet or in parking lots while worshipers remain in cars—are inadequate for them.

Here is the relevant text of the order in question:

All public and private gatherings of any number of people occurring outside a single household or living unit are prohibited, except for the limited purposes permitted by this Executive Order. Pursuant to current guidance from the CDC, any gathering of more than **ten** people is prohibited unless exempted by this Executive Order. Nothing in this Executive Order prohibits the gathering of members of a household or residence.

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

Executive Order 2020-32 §2(3) (Apr. 30, 2020) (boldface in original). Section 2(5)(vi) adds that people are free to leave their homes

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

One other section of this order bears on religious activities. Section 2(12)(c) includes in the list of “essential” functions exempt from the ten-person cap:

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

Religious services, too, are deemed “essential,” see §2(5)(vi), which is why they can proceed while concerts are forbidden, but they have not been exempted from the size limit.

The churches contend that these rules burden the free exercise of their faith, which requires adherents to assemble in person, and discriminates against religious services compared with the many economic and charitable activities that the Governor has exempted from the ten-person limit. The churches are particularly put out that their members may assemble to feed the poor but not to celebrate their faith. A district court, however, concluded that Executive Order 2020-32 is neutral with respect to religion and supported by the compelling need to safeguard the public health during a pandemic. The court denied the motion for a preliminary injunction. 2020 U.S. Dist. LEXIS 84348 (N.D. Ill. May 13, 2020). Plaintiffs appealed under 28 U.S.C. §1292(a)(1).

We denied the churches’ motion for an injunction pending appeal, with this explanation:

Based on this court’s preliminary review of this appeal for purposes of this motion, we find that plaintiffs have not shown a sufficient likelihood of success on the merits to warrant the extraordinary relief of an injunction pending appeal. The Governor’s Executive Order 2020-32 responds to an extraordinary pub-

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lic health emergency. See generally *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). The Executive Order does not discriminate against religious activities, nor does it show hostility toward religion. It appears instead to impose neutral and generally applicable rules, as in *Employment Division v. Smith*, 494 U.S. 872 (1990). The Executive Order's temporary numerical restrictions on public gatherings apply not only to worship services but also to the most comparable types of secular gatherings, such as concerts, lectures, theatrical performances, or choir practices, in which groups of people gather together for extended periods, especially where speech and singing feature prominently and raise risks of transmitting the COVID-19 virus. Worship services do not seem comparable to secular activities permitted under the Executive Order, such as shopping, in which people do not congregate or remain for extended periods. Further, plaintiffs-appellants may not obtain injunctive relief against the Governor in federal court on the basis of the Illinois Religious Freedom Restoration Act. See *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89 (1984).

No. 20-1811 (7th Cir. May 16, 2020). We expedited briefing and oral argument.

Before the case could be argued, the Governor replaced Executive Order 2020-32 with Executive Order 2020-38 (May 29, 2020), which permits the resumption of all religious services. Section 4(a) of Order 2020-38 contains this exemption:

This Executive Order does not limit the free exercise of religion. To protect the health and safety of faith leaders, staff, congregants and visitors, religious organizations and houses of worship are encouraged to consult and follow the recommended practices and guidelines from the Illinois Department of Public Health. As set forth in the IDPH guidelines, the safest practices for religious organizations at this time are to provide services online, in a drive-in format, or outdoors (and consistent with social distancing requirements and guidance regarding wearing face coverings), and to limit indoor services to 10 people. Religious organizations are encouraged to take steps to ensure social

distancing, the use of face coverings, and implementation of other public health measures.

What used to be a cap of ten persons became a recommendation. Because this section is an “exemption,” none of Executive Order 2020-38’s rules applies to religious exercise. The guidelines, issued on May 28 and available at <https://www.dph.illinois.gov/covid19/community-guidance/places-worship-guidance>, contain eight single-spaced pages of recommendations but do not impose any legal obligation.

Illinois contends that Executive Order 2020-38 makes this suit moot, because it gives the churches all of the relief they wanted from a judge. Plaintiffs observe, however, that the Governor could restore the approach of Executive Order 2020-32 as easily as he replaced it—and that the “Restore Illinois Plan” (May 5, 2020) reserves the option of doing just this if conditions deteriorate. Executive Order 2020-38 moved Illinois to Phase 3 of this Plan, which cautions that some things “could cause us to move back”:

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

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

Voluntary cessation of the contested conduct makes litigation moot only if it is “absolutely clear that the allegedly wrongful behavior could not reasonably be expected to re-

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cur.” *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 189 (2000). Otherwise the defendant could resume the challenged conduct as soon as the suit was dismissed. The list of criteria for moving back to Phase 2 (that is, replacing the current rules with older ones) shows that it is not “absolutely clear” that the terms of Executive Order 2020-32 will never be restored. It follows that the dispute is not moot and that we must address the merits of plaintiffs’ challenge to Executive Order 2020-32 even though it is no longer in effect.

The churches contend that any limit on religious gatherings is permissible only if supported by a compelling interest, which they say is lacking. Yet *Employment Division v. Smith*, 494 U.S. 872 (1990), holds that the Free Exercise Clause does not require a state to accommodate religious functions or exempt them from generally applicable laws. The Justices recently granted certiorari in a case presenting the question whether *Smith* should be overruled, *Fulton v. Philadelphia*, 140 S. Ct. 1104 (2020), but *Fulton* will not be argued until next fall. Unless the Justices overrule or modify *Smith*, we must implement its approach.

Congress established rules more favorable to religion through the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb to 2000bb–4, but *Boerne v. Flores*, 521 U.S. 507 (1997), holds that those rules cannot be applied to the states. Illinois has itself created rules more favorable to religion through the Illinois Religious Freedom Restoration Act, 775 ILCS 35/1 to 35/30, and plaintiffs want to take advantage of that statute. Given the Eleventh Amendment and principles of sovereign immunity, however, a federal court cannot issue relief against a state under state law. See, e.g., *Pennhurst*

State School & Hospital v. Halderman, 465 U.S. 89 (1984). Plaintiffs maintain that *Pennhurst* is irrelevant because Illinois has consented to the enforcement of the Illinois Religious Freedom Restoration Act, thus waiving its sovereign immunity. Consent to be sued in state court does not imply consent to be sued in federal court, however; that takes a “clear declaration”. See, e.g., *College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board*, 527 U.S. 666, 676 (1999) (citing other cases). Section 35/20 provides:

If a person’s exercise of religion has been burdened in violation of this Act, that person may assert that violation as a claim or defense in a judicial proceeding and may obtain appropriate relief against a government. A party who prevails in an action to enforce this Act against a government is entitled to recover attorney’s fees and costs incurred in maintaining the claim or defense.

See also §35/10(b)(2). This language authorizes judicial relief but does not clearly authorize suit against the state in federal court. As a result, neither the federal nor the state Religious Freedom Restoration Act can be applied in this case.

The vital question therefore is whether Executive Order 2020-32 discriminates against religion. Funerals, weddings, and similar activities are subject to the same size limit that applies to worship services. Illinois did not set out to disadvantage religious services compared with secular events. Nor does the order discriminate among faiths. Cf. *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993).

Plaintiffs maintain, however, that the ten-person cap disfavors religious services compared with, say, grocery shopping (more than ten people at a time may be in a store) or warehouses (where a substantial staff may congregate to prepare and deliver the goods that retail shops sell). If those

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businesses, and other essential functions such as feeding and housing the poor under §2(12)(c), may place ten unrelated persons in close contact, it amounts to disparate treatment that a religious service cannot do so as well.

For its part, Illinois reminds us how Executive Order 2020-32 §2(3) itself classifies religious worship: with other indoor public gatherings of unrelated persons. At least worship services can proceed (with a size limit), while concerts, movies, and similar events are forbidden.

So what is the right comparison group: grocery shopping, warehouses, and soup kitchens, as plaintiffs contend, or concerts and lectures, as Illinois maintains? Judges of other appellate courts have supported both comparisons. Plaintiffs point us to two opinions of the Sixth Circuit plus two opinions dissenting from orders denying injunctions pending appeal. See *Maryville Baptist Church, Inc. v. Beshear*, 957 F.3d 610 (6th Cir. 2020); *Roberts v. Neace*, 958 F.3d 409 (6th Cir. 2020); *South Bay United Pentecostal Church v. Newsom*, 2020 U.S. App. LEXIS 16464 (9th Cir. May 22, 2020) (Collins, J., dissenting); *South Bay United Pentecostal Church v. Newsom*, No. 19A1044 (U.S. May 29, 2020) (Kavanaugh, J., joined by Thomas & Gorsuch, JJ., dissenting). Illinois relies on the majorities in *South Bay United Pentecostal Church*: the Ninth Circuit's panel did not provide much analysis when denying the motion for an injunction, nor did a majority of the Supreme Court, but Chief Justice Roberts filed a concurring opinion with these observations:

Although California's guidelines place restrictions on places of worship, ... [s]imilar or more severe restrictions apply to comparable secular gatherings, including lectures, concerts, movie showings, spectator sports, and theatrical performances, where large groups of people gather in close proximity for extended

periods of time. And the Order exempts or treats more leniently only dissimilar activities, such as operating grocery stores, banks, and laundromats, in which people neither congregate in large groups nor remain in close proximity for extended periods.

We line up with Chief Justice Roberts.

It would be foolish to pretend that worship services are exactly like any of the possible comparisons, but they seem most like other congregate functions that occur in auditoriums, such as concerts and movies. Any of these indoor activities puts members of multiple families close to one another for extended periods, while invisible droplets containing the virus may linger in the air. Functions that include speaking and singing by the audience increase the chance that persons with COVID-19 may transmit the virus through the droplets that speech or song inevitably produce. As Chief Justice Roberts observed, concerts and church services differ from grocery stores and pharmacies, “in which people neither congregate in large groups nor remain in close proximity for extended periods.”

The churches reply that people *do* remain together for extended periods in warehouses, and potentially in office settings (though most offices contain spaces that provide social distancing). It is not clear to us that warehouse workers engage in the sort of speech or singing that elevates the risk of transmitting the virus, or that they remain close to one another for extended periods, but some workplaces present both risks. Meatpacking plants and nursing homes come to mind, and they have been centers of COVID-19 outbreaks. But it is hard to see how food production, care for the elderly, or the distribution of vital goods through warehouses could be halted.

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Reducing the rate of transmission would not be much use if people starved or could not get medicine. That's also why soup kitchens and housing for the homeless have been treated as essential. Those activities *must* be carried on in person, while concerts can be replaced by recorded music, movie-going by streaming video, and large in-person worship services by smaller gatherings, radio and TV worship services, drive-in worship services, and the Internet. Feeding the body requires teams of people to work together in physical spaces, but churches can feed the spirit in other ways.

Perhaps a state could differentiate between the maximum gathering permitted in a small church and a cathedral with seats for 3,000, but we do not evaluate orders issued in response to public-health emergencies by the standard that might be appropriate for years-long notice-and-comment rulemaking. See *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), which sustains a public-health order against a constitutional challenge. Perhaps with more time—and more data from contact tracing—Illinois could figure out just how dangerous religious services are compared with warehouses and similar activities, but no one contends that such data were available when Executive Order 2020-32 was promulgated (or, for that matter, now).

So we do not deny that warehouse workers and people who assist the poor or elderly may be at much the same risk as people who gather for large, in-person religious worship. Still, movies and concerts seem a better comparison group, and by that standard the discrimination has been in favor of religion. While all theaters and concert halls in Illinois have been closed since mid-March, sanctuaries and other houses of worship were open, though to smaller gatherings. And

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under Executive Order 2020-38 all arrangements for worship are permitted while schools, theaters, and auditoriums remain closed. Illinois has not discriminated against religion and so has not violated the First Amendment, as *Smith* understands the constitutional requirements.

Plaintiffs present some additional arguments, which have been considered but need not be discussed separately.

AFFIRMED

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

July 27, 2020

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL S. KANNE, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

No. 20-1811

ELIM ROMANIAN PENTECOSTAL CHURCH and
LOGOS BAPTIST MINISTRIES,
Plaintiffs-Appellants,

v.

JAY ROBERT PRITZKER, Governor of Illinois,
Defendant-Appellee.

} Appeal from the United States
District Court for the Northern
District of Illinois, Eastern
Division.

} No. 20 C 2782
Robert W. Gettleman, *Judge.*

Order

Plaintiffs-Appellants filed a petition for rehearing and rehearing en banc on July 10, 2020. No judge in regular active service has requested a vote on the petition for rehearing en banc, and all of the judges on the panel have voted to deny rehearing. The petition for rehearing is therefore DENIED.

(ORDER LIST: 590 U.S.)

FRIDAY, MAY 29, 2020

ORDER IN PENDING CASE

19A1046 ELIM ROMANIAN CHURCH, ET AL. V. PRITZKER, GOV. OF IL

The application for injunctive relief presented to Justice Kavanaugh and by him referred to the Court is denied.

The Illinois Department of Public Health issued new guidance on May 28. The denial is without prejudice to Applicants filing a new motion for appropriate relief if circumstances warrant.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk
Phone: (312) 435-5850
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ORDER

May 16, 2020

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL S. KANNE, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

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

The following are before the court:

1. **PLAINTIFFS-APPELLANTS' EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL AND TO EXPEDITE APPEAL**, filed on May 15, 2020, by counsel for the appellants.
2. **BRIEF OF AMICUS CURIAE AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE IN SUPPORT OF APPELLEES AND IN OPPOSITION TO APPELLANTS' EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL**, filed on May 16, 2020, by counsel for amicus curiae.

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

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

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

1. The brief and required short appendix of the appellants are due by May 22, 2020.
2. The brief of the appellee is due by June 1, 2020.
3. The reply brief of the appellant, if any, is due by June 5, 2020.

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

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

Important Scheduling Notice !

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

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

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

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

MEMORANDUM OPINION AND ORDER¹

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

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

¹ The facts discussed in this opinion are uncontested and principally taken from the parties’ submissions.

² Thomas Payne, “The Crisis” (December 23, 1776).

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

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

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

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

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

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

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

Likelihood of Success on the Merits

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

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

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

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

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

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

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

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

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

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

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

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

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

[I]n person religious services create a higher risk of contagion than operating grocery stores or staffing manufacturing plants. The key distinction turns on the nature of each activity. When people buy groceries, for example, they typically enter a building quickly, do not engage directly with others except at point of sale, and leave once the task is complete. The purpose of shopping is not to gather with others or engage them in conversation and fellowship, but to purchase necessary items and then leave as soon as possible.

By comparison, religious services involve sustained interactions between many people ... Given that religious gatherings seek to promote conversation and fellowship, they “endanger” the government’s interest in fighting COVID-19 to a “greater degree” than the secular businesses that Plaintiffs identify.

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

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

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

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

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

religion, or on religion as such, or to favor the adherents of any sect or religious organization.”

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

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

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

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

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

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

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

Balancing of Harms

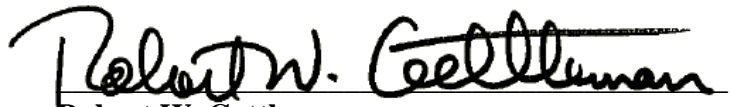
Because plaintiffs have not shown a greater than negligible chance of success on the merits, they are not entitled to preliminary relief. But, even if they had a slight chance of success, under the sliding scale approach, the less likely their chance of success the more the balance of harms must weigh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

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

CONCLUSION

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

ENTER: May 13, 2020


Robert W. Gettleman
United States District Judge



April 30, 2020

Executive Order 2020-32

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- providing face coverings to all employees who are not able to maintain a minimum six-foot social distance at all times;
 - staggering shifts;
 - reducing line speeds;
 - operating only essential lines, while shutting down non-essential lines;
 - ensuring that all spaces where employees may gather, including locker rooms and lunchrooms, allow for social distancing; and
 - downsizing operations to the extent necessary to allow for social distancing and to provide a safe workplace in response to the COVID-19 emergency.
5. **Requirements for all businesses.** All businesses must evaluate which employees are able to work from home, and are encouraged to facilitate remote work from home when possible. All businesses that have employees physically reporting to a work-site must post the guidance from the Illinois Department of Public Health (IDPH) and Office of the Illinois Attorney General regarding workplace safety during the COVID-19 emergency. The guidance will be posted on the IDPH webpage.

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

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

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

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

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

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

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

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

4. **Prohibited and permitted travel.** All travel, including, but not limited to, travel by automobile, motorcycle, scooter, bicycle, train, plane, or public transit, except Essential Travel and Essential Activities as defined herein, is prohibited. People riding on public transit must comply with Social Distancing Requirements to the greatest extent feasible. This Executive Order allows travel into or out of the State to maintain Essential Businesses and Operations and Minimum Basic Operations.
5. **Leaving the home for essential activities is permitted.** For purposes of this Executive Order, individuals may leave their residence only to perform any of the following Essential Activities, and must follow the Social Distancing Requirements set forth in this Order, including wearing face coverings when in public or at work:
 - a. **For health and safety.** To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (including, but not limited to, pets), such as, by way of example only and without limitation, seeking emergency services, obtaining medical supplies or medication, or visiting a health care professional.
 - b. **For necessary supplies and services.** To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, groceries and food, household consumer products, supplies they need to work from home, and products necessary to maintain the safety, sanitation, and essential operation of residences.
 - c. **For outdoor activity.** To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements, as defined below, such as, by way of example and without limitation, walking, hiking, running, and biking. Individuals may go to public parks and open outdoor recreation areas, including specific State parks that remain open for certain activities, as designated by the Illinois Department of Natural Resources. Fishing, boating, and golf are permitted only when following the guidelines provided by the Illinois Department of Commerce and Economic Opportunity (DCEO). Playgrounds may increase spread of COVID-19, and therefore shall be closed.
 - d. **For certain types of work.** To perform work providing essential products and services at Essential Businesses or Operations (which, as defined below, includes Healthcare and Public Health Operations, Human Services Operations, Essential Governmental Functions, and Essential Infrastructure) or to otherwise carry out activities specifically permitted in this Executive Order, including Minimum Basic Operations.
 - e. **To take care of others.** To care for a family member, friend, or pet in another household, and to transport family members, friends, or pets as allowed by this Executive Order.
 - f. **To engage in the free exercise of religion.** To engage in the free exercise of religion, provided that such exercise must comply with Social Distancing Requirements and the limit on gatherings of more than ten people in keeping with

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. **Businesses covered by this Executive Order.** For the purposes of this Executive Order, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function it performs, or its corporate or entity structure.
12. **Essential Businesses and Operations.** For the purposes of this Executive Order, Essential Businesses and Operations means Healthcare and Public Health Operations,

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

- a. **Stores that sell groceries and medicine.** Grocery stores, pharmacies; certified farmers' markets, farm and produce stands, supermarkets, convenience stores, and other establishments engaged in the retail sale of groceries, canned food, dry goods, frozen foods, fresh fruits and vegetables, pet supplies, fresh meats, fish, and poultry, alcoholic and non-alcoholic beverages, and any other household consumer products (such as cleaning and personal care products). This includes stores that sell groceries, medicine, including medication not requiring a medical prescription, and also that sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences and Essential Businesses and Operations;
- b. **Food, beverage, and cannabis production and agriculture.** Food and beverage manufacturing, production, processing, and cultivation, including farming, livestock, fishing, baking, and other production agriculture, including cultivation, marketing, production, and distribution of animals and goods for consumption; licensed medical and adult use cannabis dispensaries and licensed cannabis cultivation centers; and businesses that provide food, shelter, and other necessities of life for animals, including animal shelters, rescues, shelters, kennels, and adoption facilities;
- c. **Organizations that provide charitable and social services.** Businesses and religious and secular nonprofit organizations, including food banks, when providing food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities;
- d. **Media.** Newspapers, television, radio, and other media services;
- e. **Gas stations and businesses needed for transportation.** Gas stations and auto-supply, auto-repair, and related facilities and bicycle shops and related facilities;
- f. **Financial institutions.** Banks, currency exchanges, consumer lenders, including but not limited to, payday lenders, pawnbrokers, consumer installment lenders and sales finance lenders, credit unions, appraisers, title companies, financial markets, trading and futures exchanges, affiliates of financial institutions, entities that issue bonds, related financial institutions, and institutions selling financial products;
- g. **Hardware and supply stores and greenhouses, garden centers, and nurseries.** Hardware stores and businesses that sell electrical, plumbing, and heating material, and greenhouses, garden centers, and nurseries;
- h. **Critical trades.** Building and Construction Tradesmen and Tradeswomen, and other trades including but not limited to plumbers, electricians, exterminators, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, HVAC, painting, moving and relocation services, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses and Operations;

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

- i. Mail, post, shipping, logistics, delivery, and pick-up services. Post offices and other businesses that provide shipping and delivery services, and businesses that ship or deliver groceries, food, alcoholic and non-alcoholic beverages, goods or services to end users or through commercial channels;
- j. Educational institutions. Educational institutions—including public and private pre-K-12 schools, colleges, and universities—for purposes of facilitating distance learning, performing critical research, or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible. Educational institutions may allow and establish procedures for pick-up of necessary supplies and/or student belongings and dormitory move-out if conducted in a manner consistent with public health guidelines, including Social Distancing Requirements. This Executive Order is consistent with and does not amend or supersede Executive Order 2020-05 (COVID-19 Executive Order No. 3) or Executive Order 2020-06 (COVID-19 Executive Order No. 4) except that affected schools have been closed past the April 7, 2020 date reflected in those Orders;
- k. Laundry services. Laundromats, dry cleaners, industrial laundry services, and laundry service providers;
- l. Restaurants for consumption off-premises. Restaurants and other facilities that prepare and serve food, but only for consumption off-premises, through such means as in-house delivery, third-party delivery, drive-through, curbside pick-up, and carry-out. Schools and other entities that typically provide food services to students or members of the public may continue to do so under this Executive Order on the condition that the food is provided to students or members of the public on a pick-up and takeaway basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site due to the virus's propensity to physically impact surfaces and personal property. This Executive Order is consistent with and does not amend or supersede Section 1 of Executive Order 2020-07 (COVID-19 Executive Order No. 5) except that Section 1 is ordered to be extended through April 7, 2020;
- m. Supplies to work from home. Businesses that sell, manufacture, or supply products needed for people to work from home;
- n. Supplies for Essential Businesses and Operations. Businesses that sell, manufacture, or supply other Essential Businesses and Operations with the support or materials necessary to operate, including computers, audio and video electronics, household appliances; IT and telecommunication equipment; hardware, paint, flat glass; electrical, plumbing and heating material; sanitary equipment; personal hygiene products; food, food additives, ingredients and components; medical and orthopedic equipment; optics and photography equipment; diagnostics, food and beverages, chemicals, soaps and detergent; and firearm and ammunition suppliers and retailers for purposes of safety and security;
- o. Transportation. Airlines, taxis, transportation network providers (such as Uber and Lyft), vehicle rental services, paratransit, and other private, public, and commercial transportation and logistics providers necessary for Essential Activities and other purposes expressly authorized in this Executive Order;
- p. Home-based care and services. Home-based care for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness, including caregivers such as nannies who

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

- q. **Residential facilities and shelters.** Residential facilities and shelters for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness;
 - r. **Professional services.** Professional services, such as legal services, accounting services, insurance services, real estate services (including appraisal and title services);
 - s. **Day care centers for employees exempted by this Executive Order.** Day care centers granted an emergency license pursuant to Title 89, Section 407.500 of the Illinois Administrative Code, governing Emergency Day Care Programs for children of employees exempted by this Executive Order to work as permitted. The licensing requirements for day care homes pursuant to Section 4 of the Child Care Act, 225 ILCS 10/4, are hereby suspended for family homes that receive up to 6 children for the duration of the Gubernatorial Disaster Proclamation;
 - t. **Manufacture, distribution, and supply chain for critical products and industries.** Manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as pharmaceutical, technology, biotechnology, healthcare, chemicals and sanitization, waste pickup and disposal, agriculture, food and beverage, transportation, energy, steel and steel products, petroleum and fuel, mining, construction, national defense, communications, as well as products used by other Essential Businesses and Operations;
 - u. **Critical labor union functions.** Labor Union essential activities including the administration of health and welfare funds and personnel checking on the well-being and safety of members providing services in Essential Businesses and Operations – provided that these checks should be done by telephone or remotely where possible;
 - v. **Hotels and motels.** Hotels and motels, to the extent used for lodging and delivery or carry-out food services; and
 - w. **Funeral services.** Funeral, mortuary, cremation, burial, cemetery, and related services.
13. **Minimum Basic Operations.** For the purposes of this Executive Order, Minimum Basic Operations include the following, provided that employees comply with Social Distancing Requirements, to the extent possible, while carrying out such operations:
- a. The minimum necessary activities to maintain the value of the business's inventory, preserve the condition of the business's physical plant and equipment, ensure security, process payroll and employee benefits, or for related functions.
 - b. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.
 - c. For retail stores, fulfilling online and telephonic orders through pick-up outside the store or delivery.
14. **Essential Travel.** For the purposes of this Executive Order, Essential Travel includes travel for any of the following purposes. Individuals engaged in any Essential Travel must comply with all Social Distancing Requirements as defined in this Section.

- a. Any travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses and Operations, or Minimum Basic Operations.
- b. Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons.
- c. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.
- d. Travel to return to a place of residence from outside the jurisdiction.
- e. Travel required by law enforcement or court order, including to transport children pursuant to a custody agreement.
- f. Travel required for non-residents to return to their place of residence outside the State. Individuals are strongly encouraged to verify that their transportation out of the State remains available and functional prior to commencing such travel.

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

- a. **Required measures.** Essential Businesses and Operations and businesses engaged in Minimum Basic Operations must take proactive measures to ensure compliance with Social Distancing Requirements, including where possible:
 - i. **Designate six-foot distances.** Designating with signage, tape, or by other means six-foot spacing for employees and customers in line to maintain appropriate distance;
 - ii. **Hand sanitizer and sanitizing products.** Having hand sanitizer and sanitizing products readily available for employees and customers;
 - iii. **Separate operating hours for vulnerable populations.** Implementing separate operating hours for elderly and vulnerable customers; and
 - iv. **Online and remote access.** Posting online whether a facility is open and how best to reach the facility and continue services by phone or remotely.
 - v. **Face Coverings and PPE.** Providing employees with appropriate face coverings and requiring that employees wear face coverings where maintaining a six-foot social distance is not possible at all times. When the work circumstances require, providing employees with other PPE in addition to face coverings.

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

activities and reduce to Minimum Basic Operations.

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

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

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

Section 3. Savings clause.

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


JB Pritzker, Governor

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RESTORE ILLINOIS

A Public Health Approach To Safely Reopen Our State

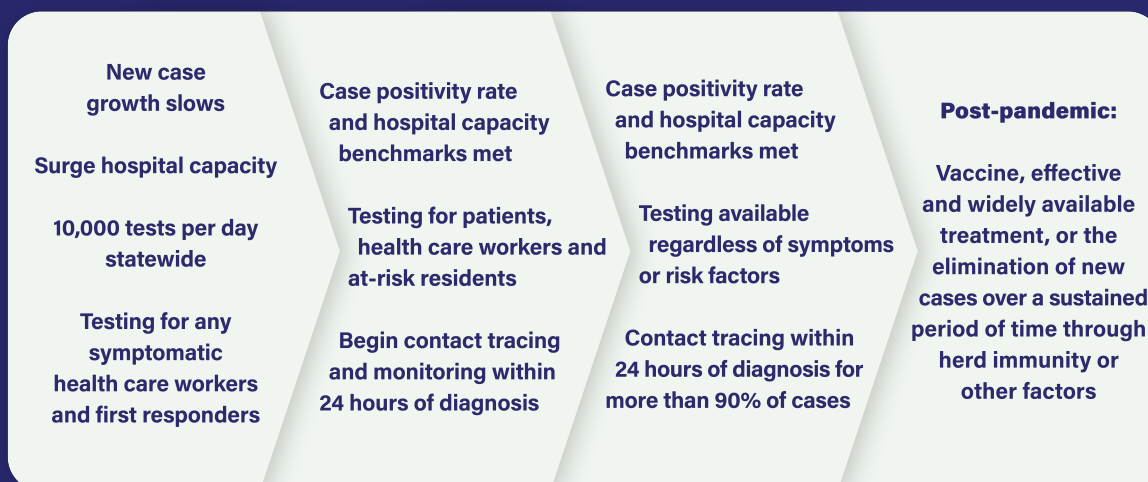


May 5, 2020

RESTORE ILLINOIS

A Public Health Approach To Safely Reopen Our State

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



An Introduction



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

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

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

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

The five phases for each health region are as follows:

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

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

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

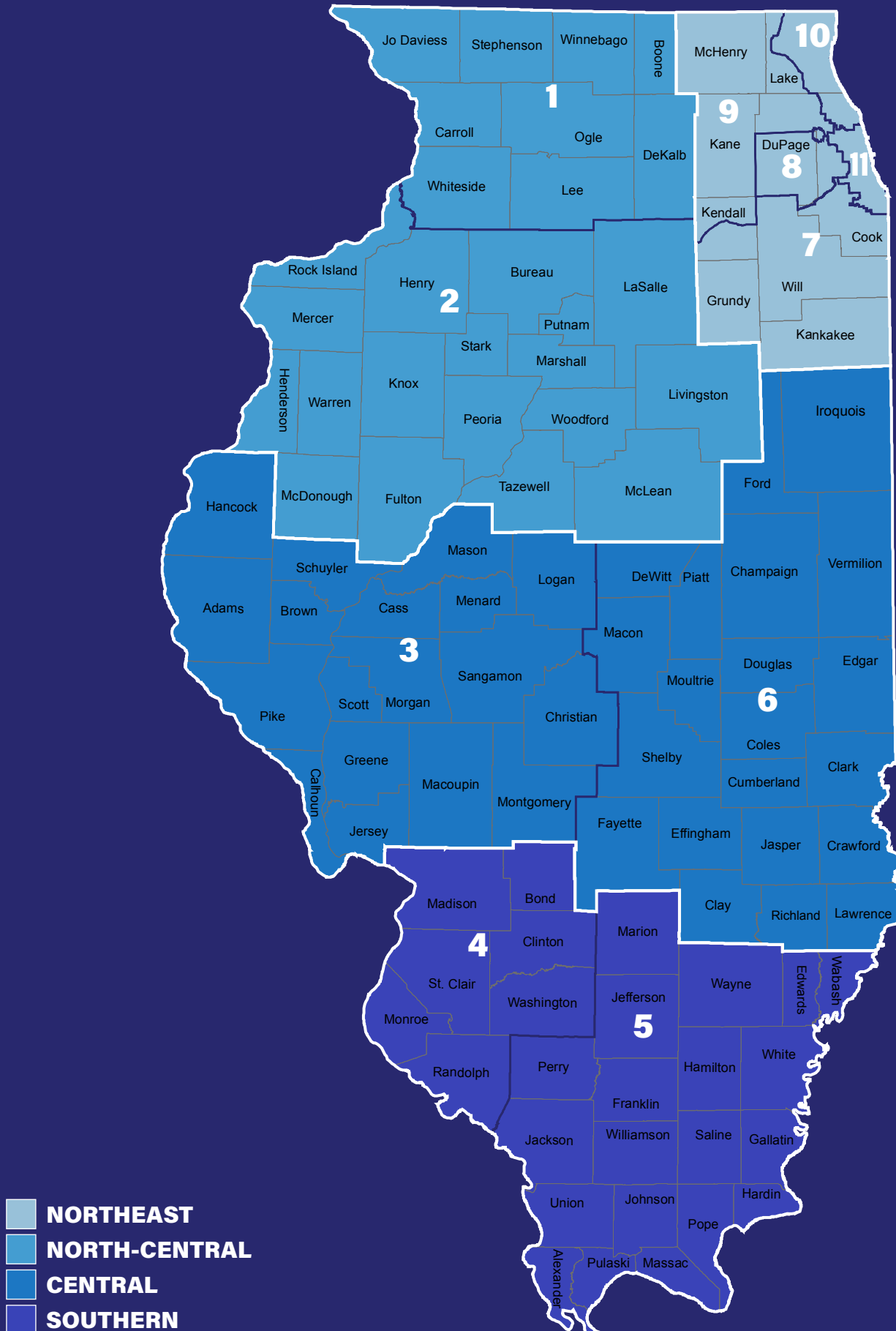
Phase 4 – Revitalization: The rate of infection among those surveillance tested and the number of patients admitted to the hospital continues to decline. Gatherings of 50 people or fewer are allowed, restaurants and bars reopen, travel resumes, child care and schools reopen under guidance from the Illinois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

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

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

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

RESTORE ILLINOIS HEALTH REGIONS



Phase 1: Rapid Spread

WHAT THIS PHASE LOOKS LIKE

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

WHAT'S OPEN?

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

Travel: Non-essential travel discouraged

Health care: Emergency procedures and COVID-19 care only

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

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

Businesses:

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

HOW WE MOVE TO THE NEXT PHASE

Cases and Capacity:

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

Testing:

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

Phase 2: Flattening

WHAT THIS PHASE LOOKS LIKE

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

WHAT'S OPEN

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

Travel: Non-essential travel discouraged

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

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

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

Businesses:

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

HOW WE MOVE TO THE NEXT PHASE

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

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

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

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

WHAT COULD CAUSE US TO MOVE BACK

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

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

Phase 3: Recovery

WHAT THIS PHASE LOOKS LIKE

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

WHAT'S OPEN

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

Travel: Travel should follow IDPH and CDC approved guidance

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

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

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

Businesses:

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

HOW WE MOVE TO THE NEXT PHASE

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

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

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

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

WHAT COULD CAUSE US TO MOVE BACK

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

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

Phase 4: Revitalization

WHAT THIS PHASE LOOKS LIKE

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

WHAT'S OPEN

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

Travel: Travel should follow IDPH and CDC approved guidance

Health care: All health care providers are open

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

Outdoor Recreation: All outdoor recreation allowed

Businesses:

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

HOW WE MOVE TO THE NEXT PHASE

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

WHAT COULD CAUSE US TO MOVE BACK

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

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

Phase 5: Illinois Restored

WHAT THIS PHASE LOOKS LIKE

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

WHAT'S OPEN

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

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
Eastern Division**

ELIM ROMANIAN PENTECOSTAL CHURCH,)
and LOGOS BAPTIST MINISTRIES,)

Plaintiffs,)

v.)

JAY ROBERT PRITZKER, in his official capacity)
as Governor of the State of Illinois,)

Defendant.)

Case No. _____

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

Plaintiffs, ELIM ROMANIAN PENTECOSTAL CHURCH, and LOGOS BAPTIST MINISTRIES (collectively, “Churches”), sue Defendant, JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois (“Governor Pritzker” or the “State”), and allege:

URGENCIES JUSTIFYING TEMPORARY RESTRAINING ORDER

1. In their Prayer for Relief, *infra*, and in the contemporaneously filed Motion for Temporary Restraining Order (TRO), Plaintiffs seek a TRO restraining enforcement against Plaintiffs of the various COVID-19 orders issued by Governor Pritzker and other State officials purporting to prohibit Plaintiffs, on pain of criminal sanctions, from gathering in-person at Plaintiffs’ Churches for worship services that include more than 10 people, regardless of whether Plaintiffs meet or exceed 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 the 10-person limit. **Governor Pritzker has made it clear that churches, such as Plaintiffs, will not be able to hold in-person gatherings of more than 10 people until Phase 4 of his Restore Illinois plan, and that gatherings of more than 50 cannot take place until Phase 5—which he has stated may take more than 1 year to achieve, and will only be available if there is some vaccine widely available.**

2. As shown in the verified allegations below, Governor Pritzker’s Executive Orders relating to COVID-19 have been interpreted, applied, and enforced, including against Plaintiffs, such that Plaintiffs have been forced not to hold in-person religious services at their churches and forced to prohibit their congregants from attending their houses of worship.

3. At around the same time as Governor Pritzker’s Executive Orders surrounding COVID-19 were being used to threaten criminal sanctions on Plaintiffs, 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 Illinois State Police—acting under the direction of Governor Pritzker’s 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 similar to Governor Pritzker’s orders here—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 Kentucky Governor from enforcing prohibitions on religious worship services. *See Maryville Baptist Church, Inc. v. Beshear*, -- F.3d --, 2020 WL 2111316 (6th Cir. May 2, 2020). In that appeal challenging orders similar to Governor Pritzker’s 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

issued an injunction pending appeal enjoining the Kentucky Governor from enforcing his unconstitutional orders. *Id.*, at *5.

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

10. Absent emergency relief from this Court, Plaintiffs, their pastors, 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 Plaintiffs, their pastors, or their members do not subscribe to what Governor Pritzker 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. Plaintiffs bring this case to restrain the troubling transgression of their fundamental and cherished liberties wrought by the imposition of Governor Pritzker’s orders surrounding COVID-19. Plaintiffs seek 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, Plaintiffs respectfully submit that in an effort to uphold his sworn duties Governor Pritzker has stepped over a line the Constitution does not permit. Because of that, Plaintiffs bring 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). Plaintiffs pray unto the Court that it not permit the cherished and fundamental liberties enshrined in the Constitution to be another tragic casualty of COVID-19.

17. Indeed, Plaintiffs and many of their members chose America as their homeland after fleeing communist oppression in Romania that, much like the COVID-19 Orders at issue here, targeted religious gatherings, houses of worship, and communal exercise of their religion and faith and imposed criminal sanctions for defiance of such prohibitions.

18. Some of the pastors and members of Plaintiffs' churches experienced such persecution personally, and had hoped to never experience it again in the great experiment of American freedom.

PARTIES

19. Plaintiff ELIM ROMANIAN PENTECOSTAL CHURCH is a not-for-profit corporation incorporated under the laws of the State of Illinois with its principal place of business at 4850 N. Bernard Street, Chicago, Illinois 60625.

20. Plaintiff LOGOS BAPTIST MINISTRIES is a not-for-profit corporation incorporated under the laws of the State of Illinois with its principal place of business at 7280 North Caldwell Avenue, Niles, Illinois 60714.

21. Defendant, JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois ("Governor Pritzker" or the "State"), is responsible for enacting and enforcing the COVID-19 Executive Orders and other Orders at issue in this litigation. Governor Pritzker is sued in his official capacity.

JURISDICTION AND VENUE

22. 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 5 the Constitution of the State of Illinois, and the Illinois Religious Freedom Restoration Act.

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

24. 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 Plaintiffs' claims occurred in this district.

25. 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.

26. This Court is authorized to grant Plaintiffs’ prayer for relief regarding costs, including a reasonable attorney’s fee, pursuant to 42 U.S.C. § 1988.

GENERAL ALLEGATIONS

A. GOVERNOR PRITZKER’S EXECUTIVE ORDERS AND RELATED ORDERS FROM THE STATE OF ILLINOIS.

27. On March 9, 2020, in response to COVID-19, Governor Pritzker issued a Gubernatorial Disaster Proclamation, which declared a state of emergency in the State of Illinois. A true and correct copy of the March 9th Proclamation is attached hereto as **EXHIBIT A** and incorporated herein.

28. In the Emergency Proclamation, Governor Pritzker stated that COVID-19 represents a public health emergency and directed various government agencies to implement certain restrictions and orders to facilitate the State’s response.

29. On March 13, 2020, Governor Pritzker issued Executive Order 2020-04 stating that “all public and private gatherings in the State of Illinois of 1,000 or more people are cancelled.” A true and correct copy of Executive Order 2020-04 is attached hereto as **EXHIBIT B** and incorporated herein.

30. On March 16, 2020, Governor Pritzker issued Executive Order 2020-07, which bans “all public and private gatherings in the State of Illinois of 50 or more people.” A true and correct copy of Executive Order 2020-07 is attached hereto as **EXHIBIT C** and incorporated herein.

31. Executive Order 2020-07 explicitly states that its prohibitions apply to “faith-based events” that “bring[] together 50 or more people in a single room or a single space at the same time.” But, the plain language of the order excludes so-called “essential” services, such as grocery stores and gas stations.

32. Executive Order 2020-07 also directs various government agencies, including the Illinois State Police, to use all available resources “to enforce the provisions of this Executive Order.”

33. On March 20, 2020, Governor Pritzker issued Executive Order 2020-10, which purports to mandate all individuals in the State of Illinois to “stay at home or at their place of residence.” A true and correct copy of Executive Order 2020-10 is attached hereto as **EXHIBIT D** and incorporated herein. The stay-at-home mandate exempts “Essential Travel,” including for access to “Essential Activities” and “Essential Businesses and Operations.”

34. Executive Order 2020-10 states that “[a]ll public and private gatherings of **any number** of people . . . are prohibited” (emphasis added), and also (inconsistently) that “any gathering of more than **ten** people is prohibited,” unless otherwise permitted by the Executive Order. But, the order exempts from the gathering limitations “Essential Businesses and Operations,” comprising health, human services, governmental, and infrastructure operations, and **23 categories of exempted businesses** including, *inter alia*, grocery stores, alcoholic beverage stores, hardware stores, cannabis stores, gas stations, law firms and professional businesses, labor unions, and hotels, and also including warehouse, supercenter, and ‘big box’ stores combining several categories.

35. The only limitation placed on so-called “Essential Businesses and Operations” is that they—“[t]o the greatest extent feasible” and “where possible”—comply with social distancing and hygiene recommendations.

36. On April 1, 2020, Governor Pritzker issued Executive Order 2020-18, which continued the prohibitions of the previous executive orders through April 30, 2020. A true and correct copy of Executive Order 2020-18 is attached hereto as **EXHIBIT E** and incorporated herein.

37. On April 2, 2020, Governor Pritzker issued another Disaster Proclamation, extending his purported authority to issue emergency declarations in response to COVID-19. A true and correct copy of the April 2 Proclamation is attached hereto as **EXHIBIT F** and incorporated herein.

38. On April 30, 2020, Governor Pritzker issued another Disaster Proclamation, extending until May 30, 2020 the original disaster proclamation and purporting to extend his authority to continue issuing executive orders related to COVID-19. A true and correct copy of the April 30th Proclamation is attached hereto as **EXHIBIT G** and incorporated herein.

39. On April 30, 2020, Governor Pritzker also issued Executive Order 2020-32, which effectively replaced Executive Order 2020-10, and which continues to prohibit “[a]ll public and private gatherings of any number of people” and (still inconsistently) “any gathering of more than ten people.” A true and correct copy of Executive Order 2020-32 is attached hereto as **EXHIBIT H** and incorporated herein.

40. Executive Order 2020-32 also continues to require all individuals to stay in their homes and places of residence except “for Essential Activities, Essential Governmental Functions, or to operate Essential Businesses and Operations.”

41. For the first time, Executive Order 2020-32 adds to “Essential Activities” for which individuals may leave their homes or places of residence “engag[ing] in the free exercise of religion, provided that such exercise must comply with Social Distancing Requirements and the limit on gatherings of more than ten people.” The order also states that “[r]eligious organizations

and houses of worship are encouraged to use online or drive-in services to protect the health and safety of their congregants.”

42. So-called “Essential Businesses and Operations” are permitted to continue accommodate large numbers of people without the 10-person limit imposed on religious gatherings, subject only to—“to the greatest extent possible” and “where possible”—social distancing and other hygiene precautions and an occupancy limit of 50% of building capacity for retail stores.

43. Executive Order 2020-32 continues to recognize a list of **23 categories of exempted businesses as “Essential Businesses and Operations,”** including, *inter alia*, grocery stores, alcoholic beverage stores, hardware stores, cannabis stores, gas stations, law firms and professional businesses, labor unions, and hotels, and also including warehouse, supercenter, and ‘big box’ stores combining several categories.

44. On April 30, 2020, Governor Pritzker also issued Executive Order 2020-33, continuing through May 29, 2020, *inter alia*, Executive Orders 2020-04 and 2020-07. A true and correct copy of Executive Order 2020-33 is attached hereto as **EXHIBIT I** and incorporated herein.

45. On May 5, 2020, Governor Pritzker released his “Restore Illinois” plan, which purports to set stages for the reopening of churches and religious gatherings in Illinois. A true and correct copy of Restore Illinois is attached hereto as **EXHIBIT J** and incorporated herein.

46. Restore Illinois states that Phases 1, 2, and 3 will continue to limit in-person gatherings to 10 or fewer people, with the Phase 3 limit “subject to change based on latest data & guidance.”

47. Restore Illinois does not contemplate permitting religious gatherings of more than 10 people until Phase 4, when “[g]atherings of 50 people or fewer are allowed with this limit

subject to change based on latest data and guidance,” and if Governor Pritzker determines it is appropriate to permit such gatherings. Also, beginning Phase 4 this plan “can and will be updated” and is “subject to change” at any time and in the Governor’s discretion.

48. Restore Illinois does not contemplate permitting gatherings of more than 50 people until Phase 5, when “[l]arge gatherings of all sizes can resume,” but Phase 5 will not occur until “a vaccine is developed,” “a treatment option is readily available,” or “there are no new cases over a sustained period.”

49. Restore Illinois is merely “an initial framework” with all criteria subject to change, without commitments to timing, and contemplating backwards movement to prior phases as well as forward movement to new phases. To be sure, in his press conference on May 6, 2020, Governor Pritzker made it clear that in-person gathering limitations will apply to churches throughout the phased openings, and that it might take more than 12 to 18 months for churches to be permitted to have over 50 persons present, regardless of the sizes of facilities and whether social distancing may be effected. *See Gov. Pritzker’s Coronavirus (COVID-19) Press Conference, Wednesday, May 6, 2020, State of Illinois Coronavirus (COVID-19) Response*, available at <https://coronavirus.illinois.gov/s/news-archive>, and <https://vimeo.com/415693668> (last visited May 7, 2020).

50. Plaintiffs hereinafter refers to Executive Order 2020-04, Executive Order 2020-07, Executive Order 2020-10, Executive Order 2020-18, Executive Order 2020-32, and Executive Order 2020-33, the relevant disaster Proclamations, and the Restore Illinois plan (EXHIBITS A–J) collectively as the “GATHERING ORDERS.”

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

51. On April 8, 2020, the Illinois State Police issued an enforcement guidance document (the “ISP Enforcement Guidance”) indicating that it will enforce Governor Pritzker’s GATHERING ORDERS against churches and individuals found in violation of them. A true and correct copy of the ISP Enforcement Guidance is attached hereto as **EXHIBIT K** and incorporated herein.

52. The ISP Enforcement Guidance states that the State Police are “free to use their training to disperse the crowd” found in violation of Governor Pritzker’s GATHERING ORDERS.

53. The ISP Enforcement Guidance further states that the State Police can fill out “[s]top cards and field reports” concerning those found in violation of the GATHERING ORDERS, and that non-compliance with the GATHERING ORDERS may result in misdemeanor citations being issued for the offenses of Reckless Conduct and Disorderly Conduct under the Illinois code.

54. Through its ISP Enforcement Guidance, the Illinois State Police has unquestionably demonstrated that it intends to enforce the GATHERING ORDERS, including against Plaintiffs and their religious services.

C. PLAINTIFFS’ CHURCHES SERVICES CAN AND WILL COMPLY WITH SOCIAL DISTANCING AND PERSONAL HYGIENE RECOMMENDATIONS.

55. On Saturday May 2, 2020, Plaintiffs joined in a letter sent to Governor Pritzker informing him that they are willing to voluntarily comply with social distancing and personal hygiene practices for their in-person worship services. A true and correct copy of that letter is attached hereto as **EXHIBIT L** and incorporated herein.

56. In their letter, Plaintiffs stated that they would incorporate all of the following into each of their in-person worship services: (1) reduced seating for in-person worship services; (2) churches with moveable chairs will remove some of the chairs to maintain proper social distancing; (3) marking chairs or pews for use or non-use, and/or ushers' seating people with social distancing guidelines (allowing family units to be seated together); (4) prior to and following any in-person service, facilities will be sanitized; (5) attendees will be advised that, if they choose, they may wear masks and/or gloves; (6) attendees will be advised not to engage in hand shaking or other physical contact; (7) hand sanitizer will be available for use throughout the facility, and each person may be given a squirt of sanitizer or a sanitizer wipe upon entering; (8) selected points of entry and exit separated from each other establishing a one-way traffic pattern; (9) doors propped open or held open by ushers to prevent the need for congregants to touch doors while entering and exiting the church or sanctuary; and (10) asking anyone with any symptoms of COVID-19, anyone who works in healthcare facilities that treat COVID-19 patients, and those that are elderly and/or with auto-immune issues to forego our in-person gatherings for a time.

57. Plaintiff Elim Romanian Pentecostal Church has a campus of approximately 40,000 square feet, with 750 seats in its main auditorium and an additional 550 seats in overflow rooms (1,300 total seats).

58. Plaintiff Logos Baptist Ministries has a campus of approximately 36,000 square feet, with 425 seats in its main auditorium and 100 seats available in an overflow room (525 total seats).

59. Plaintiffs' churches, and many others like them, could each easily accommodate many more than 10 persons in a worship service while still observing all social distancing and safety precautions imposed by Governor Pritzker's GATHERING ORDERS (*i.e.*, "to the greatest extent feasible" or "when possible" for exempted businesses), and Plaintiffs can and would

practice the stringent social distancing and personal hygiene protocols outlined in their May 2, 2020 letter to Governor Pritzker.

D. LESS RESTRICTIVE ALTERNATIVES ARE AVAILABLE TO GOVERNOR PRITZKER.

60. Despite Governor Pritzker's 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 such "religious" gatherings.

61. Like the State of Illinois, 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 M** and incorporated herein.

62. 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 N** and incorporated herein.

63. 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 O** and **EXHIBIT P**, respectively, and incorporated herein.

64. 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 Q** and incorporated herein.

65. 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 R** and incorporated herein.

66. 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 S** and incorporated herein.

67. 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 T** 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.

68. 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 U** 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.”

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

70. As these other states have demonstrated, Governor Pritzker 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.

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

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

E. IRREPARABLE INJURY TO PLAINTIFFS FROM GOVERNOR PRITZKER’S GATHERING ORDERS.

73. Despite being capable of following all social distancing and personal hygiene protocols recommended by the CDC and specified in the GATHERING ORDERS, Plaintiffs have 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.

74. As a result of Governor Pritzker's GATHERING ORDERS, Plaintiffs have suffered and are suffering irreparable injury by having their pastors, members, and all attendees of future services threatened with criminal sanction.

75. As a result of Governor Pritzker's GATHERING ORDERS, Plaintiffs have suffered and are suffering irreparable injury by being prohibited from engaging in their constitutionally and statutorily protected rights of free exercise, assembly, and speech.

76. As a result of Governor Pritzker's GATHERING ORDERS, Plaintiffs have suffered and are suffering irreparable injury by the infringement of their constitutionally protected rights to be free from government hostility toward religion.

77. As a result of the Governor Pritzker's GATHERING ORDERS and the explicit threats from the Illinois State Police, Plaintiffs have suffered and are suffering irreparable injury by the continuing threat of criminal sanctions on Plaintiffs' pastors and congregants for merely exercising their constitutionally protected freedoms.

78. Due to the explicit threats of Governor Pritzker's GATHERING ORDERS and the announcements by the Illinois State Police, Plaintiffs have been forced to self-censor, cease their religious worship services, and violate their sincerely held religious beliefs.

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

79. In addition to the May 2, 2020 letter to Governor Pritzker joined by Plaintiffs (EXHIBIT L), on May 7, 2020, prior to the commencement of the instant action, Plaintiffs' counsel sent by email and facsimile a demand letter to Governor Pritzker (via Lieutenant Governor Juliana

Stratton), with copies to the Governor's General Counsel and the Illinois Attorney General, in which Plaintiffs' counsel demanded, by 3:00 P.M. on May 7, 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 Plaintiffs' churches 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 Plaintiffs' church services. A true and correct copy of the demand letter is attached hereto as **EXHIBIT V**. No written response from Governor Pritzker's office was received by the requested deadline, or at any time prior to the filing of this Verified Complaint.

80. The failure of Governor Pritzker or his officials to confirm withdrawal or cessation of enforcement of the discriminatory prohibitions on religious services in the GATHERING ORDERS and applied to Plaintiffs shows that Plaintiffs' irreparable injury to their constitutionally protected freedoms is ongoing.

81. The failure of Governor Pritzker or his officials to respond to Plaintiffs' 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 Plaintiffs' respective churches, when Governor Pritzker or other State officials will again interfere with the constitutional liberties of Plaintiffs and their congregants absent a temporary restraining order from this Court.

CONSTITUTIONAL CLAIMS

**COUNT I—THE GATHERING ORDERS VIOLATE
PLAINTIFFS’ RIGHTS TO FREE EXERCISE OF RELIGION
UNDER THE FIRST AMENDMENT**

82. Plaintiffs hereby reallege and adopt each and every allegation in paragraphs 1–81 above.

83. 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 Plaintiffs’ rights to free exercise of religion.

84. Plaintiffs have sincerely held religious beliefs that Scripture is the infallible, inerrant word of the Lord Jesus Christ, and that they are to follow its teachings.

85. Plaintiffs have 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.

86. The GATHERING ORDERS, on their face and as applied, target Plaintiffs’ sincerely held religious beliefs by prohibiting religious gatherings.

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

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

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

90. 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 Plaintiffs.

91. The GATHERING ORDERS, on their face and as applied, constitute a substantial burden on Plaintiffs' sincerely held religious beliefs.

92. 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.

93. 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.

94. The GATHERING ORDERS, on their face and as applied, fail to accommodate Plaintiffs' sincerely held religious beliefs.

95. The GATHERING ORDERS, on their face and as applied, specifically target Plaintiffs' 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 Plaintiffs' church and worship services, from operating with similar guidelines.

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

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

98. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of their most cherished liberties.

WHEREFORE, Plaintiffs respectfully pray for relief against the State as hereinafter set forth in their prayer for relief.

**COUNT II—THE GATHERING ORDERS VIOLATE
PLAINTIFFS’ RIGHTS TO PEACEABLE ASSEMBLY
UNDER THE FIRST AMENDMENT**

99. Plaintiffs hereby reallege and adopt each and every allegation in paragraphs 1–81 above.

100. 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.

101. The GATHERING ORDERS, on their face and as applied, are an unconstitutional prior restraint on Plaintiffs’ right to assemble.

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

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

104. 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.

105. 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.

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

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

108. The GATHERING ORDERS, on their face and as applied, are irrational and unreasonable and impose unjustifiable and unreasonable restrictions on Plaintiffs' constitutionally protected right to assemble.

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

110. 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."

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

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

113. Plaintiffs have no other adequate remedy at law to correct the continuing deprivation of their most cherished liberties.

WHEREFORE, Plaintiffs respectfully pray for the relief against the State as hereinafter set forth in their prayer for relief.

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

114. Plaintiffs hereby reallege and adopt each and every allegation in paragraphs 1–81 above.

115. 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 Plaintiffs' freedom of speech.

116. The GATHERING ORDERS, on their face and as applied, are an unconstitutional prior restraint on Plaintiffs' speech.

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

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

119. 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.

120. 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.

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

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

123. The GATHERING ORDERS, on their face and as applied, are irrational and unreasonable and impose unjustifiable and unreasonable restrictions on Plaintiffs' constitutionally protected speech.

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

125. 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."

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

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

128. Plaintiffs have no other adequate remedy at law to correct the continuing deprivation of their most cherished liberties.

WHEREFORE, Plaintiffs respectfully pray for the relief against the State as hereinafter set forth in their prayer for relief.

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

129. Plaintiffs hereby reallege and adopt each and every allegation in paragraphs 1–81 above.

130. 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.

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

132. 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.

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

134. The Establishment Clause does not permit the State of Illinois 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.

135. 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).

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

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

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

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

140. 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.

141. 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.

142. 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.

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

144. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of their most cherished constitutional liberties.

WHEREFORE, Plaintiffs respectfully pray for the relief against the State as hereinafter set forth in their prayer for relief.

**COUNT V—THE GATHERING ORDERS VIOLATE
PLAINTIFFS’ RIGHTS TO EQUAL PROTECTION
UNDER THE FOURTEENTH AMENDMENT**

145. Plaintiffs hereby reallege and adopt each and every allegation in paragraphs 1–81 above.

146. The Fourteenth Amendment to the United States Constitution guarantees Plaintiffs the right to equal protection under the law.

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

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

149. 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.”

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

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

152. 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.

153. 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.

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

155. The GATHERING ORDERS, on their face and as applied, are irrational and unjustifiable and impose irrational and unjustifiable restrictions on Plaintiffs' religious gatherings.

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

157. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of their most cherished liberties.

WHEREFORE, Plaintiffs respectfully pray for relief against the State as hereinafter set forth in their prayer for relief.

**COUNT VI—THE GATHERING ORDERS VIOLATE
PLAINTIFFS' RIGHTS TO A REPUBLICAN FORM OF GOVERNMENT
UNDER THE GUARANTEE CLAUSE OF ARTICLE IV, § 4 OF
THE UNITED STATES CONSTITUTION**

158. Plaintiffs hereby reallege and adopt each and every allegation in paragraphs 1–81 above.

159. 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.

160. 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.

161. 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.

162. The GATHERING ORDERS' express, unilateral, and unequivocal exercises of purported executive authority over the constitutional rights of Plaintiffs deprive Plaintiffs of the right to select their own government administration, pass their 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.

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

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

165. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of their most cherished liberties.

WHEREFORE, Plaintiffs respectfully pray for the relief against the State as hereinafter set forth in their prayer for relief.

**COUNT VII—THE GATHERING ORDERS VIOLATE
PLAINTIFFS’ RIGHTS TO FREE EXERCISE OF RELIGION
UNDER ARTICLE I, SECTION 3 OF THE CONSTITUTION OF ILLINOIS**

166. Plaintiffs hereby reallege and adopt each and every allegation in paragraphs 1–81 above.

167. Article I, § 3 of the Constitution of Illinois states: “The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed, and no person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions.”

168. Plaintiffs have sincerely held religious beliefs that Scripture is the infallible, inerrant word of the Lord Jesus Christ, and that they are to follow its teachings.

169. Plaintiffs have 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.

170. The GATHERING ORDERS, on their face and as applied, target Plaintiffs’ sincerely held religious beliefs by prohibiting religious gatherings.

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

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

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

174. 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 Plaintiffs.

175. The GATHERING ORDERS, on their face and as applied, constitute a substantial burden on Plaintiffs' sincerely held religious beliefs.

176. 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.

177. 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.

178. The GATHERING ORDERS, on their face and as applied, fail to accommodate Plaintiffs' sincerely held religious beliefs.

179. The GATHERING ORDERS, on their face and as applied, specifically target Plaintiffs' 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 Plaintiffs' church and religious gatherings, from operating with similar guidelines.

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

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

182. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of their most cherished liberties.

WHEREFORE, Plaintiffs respectfully pray for relief against the State as hereinafter set forth in their prayer for relief.

**COUNT VIII—THE GATHERING ORDERS VIOLATE
PLAINTIFFS’ RIGHTS TO FREEDOM OF SPEECH AND ASSEMBLY
UNDER ARTICLE I, SECTIONS 4–5 OF THE CONSTITUTION OF ILLINOIS**

183. Plaintiffs hereby reallege and adopt each and every allegation in paragraphs 1–81 above.

184. Article I, Section 4 of the Constitution of Illinois states that “[a]ll persons may speak, write and publish freely.”

185. Article I, Section 5 states that “[t]he people have the right to assemble in a peaceable manner.”

186. The GATHERING ORDERS, on their face and as applied, are an unconstitutional prior restraint on Plaintiffs’ speech and assembly.

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

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

189. 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.

190. 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.

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

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

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

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

195. 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."

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

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

198. Plaintiffs have no other adequate remedy at law to correct the continuing deprivation of their most cherished liberties.

WHEREFORE, Plaintiffs respectfully pray for the relief against the State as hereinafter set forth in their prayer for relief.

STATUTORY CLAIMS

COUNT IX—THE GATHERING ORDERS VIOLATE PLAINTIFFS' RIGHTS UNDER THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT

199. Plaintiffs hereby reallege and adopt each and every allegation in paragraphs 1–81 above.

200. 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.

201. 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).

202. 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).

203. Plaintiffs have sincerely held religious beliefs that Scripture is the infallible, inerrant word of the Lord Jesus Christ, and that Plaintiffs are to follow its teachings.

204. Plaintiffs have 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.

205. The GATHERING ORDERS, on their face and as applied, target Plaintiffs’ sincerely held religious beliefs by prohibiting religious gatherings.

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

207. The GATHERING ORDERS, on their face and as applied, constitute a substantial burden on Plaintiffs’ sincerely held religious beliefs.

208. 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.

209. 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.

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

211. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of their most cherished liberties.

WHEREFORE, Plaintiffs respectfully pray for relief against the State as hereinafter set forth in their prayer for relief.

COUNT X – THE GATHERING ORDERS VIOLATE PLAINTIFFS’ RIGHTS UNDER THE ILLINOIS RELIGIOUS FREEDOM RESTORATION ACT

212. Plaintiffs hereby reallege and adopt each and every allegation in paragraphs 1–81 above.

213. Illinois’s Religious Freedom Restoration Act prohibits the government from substantially burdening Plaintiffs’ free exercise of religion. 775 I.L.C.S. §35/15. If the government does burden a person’s sincerely held religious beliefs, it must demonstrate that it is in furtherance of a compelling government interest and is the least restrictive means of achieving that interest.

214. Plaintiffs have sincerely held religious beliefs that Scripture is the infallible, inerrant word of the Lord Jesus Christ, and that they are to follow its teachings.

215. Plaintiffs have 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.

216. The GATHERING ORDERS, on their face and as applied, target Plaintiffs’ sincerely held religious beliefs by prohibiting faith-based gatherings.

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

218. The GATHERING ORDERS, on their face and as applied, constitute a substantial burden on Plaintiffs' sincerely held religious beliefs.

219. Defendant lacks a compelling interest in the GATHERING ORDERS' application of differential standards for churches and faith-based gatherings than those applicable to other so-called "non-life-sustaining" businesses or services.

220. Even if the GATHERING ORDERS's restriction on faith-based 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.

221. The State has not and cannot demonstrate a compelling government interest in treating Plaintiffs' faith-based or religious gatherings differently than other non-religious gatherings of so-called "non-life-sustaining" businesses or services.

222. The State has not and cannot demonstrate that it has deployed the least restrictive means to further its purported compelling interest.

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

224. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of their most cherished liberties.

WHEREFORE, Plaintiffs respectfully pray for the relief against Defendant as hereinafter set forth in their prayer for relief

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for relief as follows:

A. That the Court issue a Temporary Restraining Order restraining and enjoining Governor Pritzker, 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 or in-person church services at Plaintiffs' churches, if Plaintiffs meet 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," "supercenter" stores, and marijuana dispensaries) to accommodate gatherings of persons without numerical limit. **To be clear, Plaintiffs merely seeks a TRO preventing Plaintiffs, their pastors, and their congregants from being subject to criminal sanctions for hosting in-person worship services on Sunday during which Plaintiffs will implement social distancing and hygiene protections on an equal basis with other non-religious gatherings.** In making such a request, Plaintiffs merely seek to be treated equally with other businesses, and seek 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 Pritzker, 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 Plaintiffs’ 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 Plaintiffs’ 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, cannabis stores, warehouse clubs, and supercenters) to accommodate gatherings of persons without numerical limit under the GATHERING ORDERS;
- iv. The State will permit Plaintiffs 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; and
- v. The State will not bring any enforcement, criminal, or other public health actions against Plaintiffs as threatened in Governor Pritzker’s 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 Illinois, and further declaring that:

- i. The State has violated Plaintiffs' rights to freedom of assembly by impermissibly prohibiting religious gatherings;
- ii. The State has violated Plaintiffs' rights to freedom of speech by impermissibly prohibiting religious gatherings;
- iii. The State has violated Plaintiffs' 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 Plaintiffs' religious gatherings;
- iv. The State has violated Plaintiffs' 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;
- vii. The State has violated the Religious Land Use and Institutionalized Persons Act by substantially and impermissibly burdening Plaintiffs' sincerely held religious beliefs and treating unequally as compared to other non-religious

assemblies or institutions, by imposing draconian prohibitions on Plaintiffs' sincerely held religious beliefs without a compelling government interest, and without deploying the least restrictive means to achieve any permissible government interest; and

- viii. The State has violated the Illinois Religious Freedom Restoration Act by substantially and impermissibly burdening Plaintiffs' sincerely held religious beliefs and treating unequally as compared to other non-religious assemblies or institutions, by imposing draconian prohibitions on Plaintiffs' 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 Plaintiffs nominal damages for the violation of Plaintiffs' 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 Plaintiffs are prevailing parties and award Plaintiffs 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/ Horatio G. Mihet

Mathew D. Staver*

Horatio G. Mihet*

Roger K. Gannam*

Daniel J. Schmid*

LIBERTY COUNSEL

P.O. Box 540774

Orlando, FL 32854

Phone: (407) 875-1776

Facsimile: (407) 875-0770

Email: court@lc.org

hmihet@lc.org

rgannam@lc.org

dschmid@lc.org

*Pro hac vice applications pending

Attorneys for Plaintiffs

VERIFICATION

I, Cristian Ionescu, am over the age of eighteen years and the Pastor of Elim Romanian Pentecostal Church, one of the Plaintiffs in this action. The statements and allegations that pertain to me and/or Plaintiff Elim Romanian Pentecostal Church 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 Illinois, that the foregoing statements are true and correct to the best of my knowledge.

Dated: May 7, 2020

/s/ Cristian Ionescu
Christian Ionescu

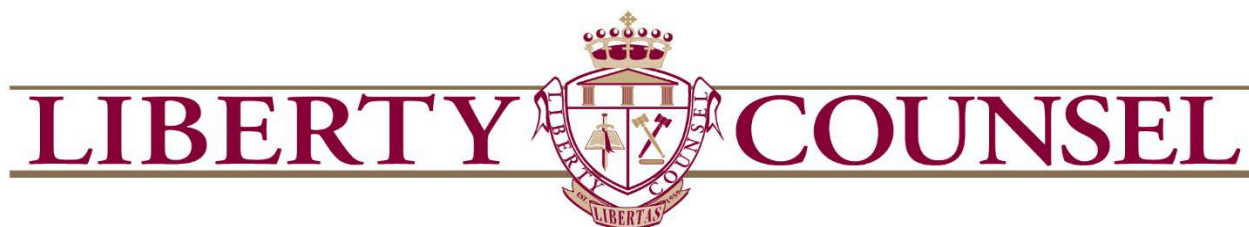
VERIFICATION

I, Daniel Chiu, am over the age of eighteen years and the Pastor of Logos Baptist Ministries, one of the Plaintiffs in this action. The statements and allegations that pertain to me and/or Plaintiff Logos Baptist Ministries 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 Illinois, that the foregoing statements are true and correct to the best of my knowledge.

Dated: May 7, 2020

/s/ Daniel Chiu

Daniel Chiu



Post Office Box 540774
Orlando, FL 32854-0774
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Facsimile: 407•875•0770
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Lynchburg, VA 24506-1108
Telephone: 434•592•7000
Facsimile: 407•875•0770
liberty@LC.org

Reply to: Florida

May 2, 2020

VIA FEDERAL EXPRESS

Governor J.B. Pritzker
Office of the Governor
207 State House
Springfield, IL 62706

Dear Governor Pritzker:

We the undersigned are Pastors and faith leaders of Romanian-American churches in Metropolitan Chicago. Our congregations, some large and some small, comprise over 2,700 congregants. We have for decades faithfully served our communities within the State of Illinois, both in preaching the Gospel and through a multitude of vibrant programs and outreaches.

The Romanian-Americans in our congregations have chosen Chicago as their homeland, many of them after fleeing communist oppression that targeted religious gatherings, houses of worship and communal exercise of their religion and faith.

We found a home in Illinois, where the promise of freedom has been consistently and faithfully achieved, until your Executive Order 2020-10 unlawfully required that our churches shut their doors to our congregants, irrespective of any social distancing and health precautions that we are willing and able to implement, while allowing many other non-religious businesses and organization to remain open.

We love our adopted country, and the Freedom we have found here, too much to stay silent as you trample on our God-given rights. In light of our shared experience living behind the Iron Curtain – where discriminatory treatment of Churches by authoritarian governments was the norm – we are determined to do everything that we can to ensure that our beloved country and our State remain the beacons of freedom that brought us here.

We recognize your recent attempt to change course, yet we deem your April 30, 2020 allowance of churches to gather together with only 10 persons or less wholly inadequate. We regard this as further evidence of the arbitrary nature of your orders.

Governor J.B. Pritzker

May 2, 2020

Page 2 of 4

You have allowed supermarkets, liquor stores, hardware stores, abortion clinics and a host of other businesses deemed “essential” to operate without the same limitations. You have singled out churches as not essential, and you have closed our doors **even though we are willing and able to implement the same safety measures employed by those that remain open.** This is a flagrant violation of the United States Constitution, and the liberties we have risked our lives to be able to enjoy in this once-free Nation.

Our willing compliance with your orders thus far has been voluntary. But this should not be misunderstood as our acquiescence to the improper and unconstitutional authority you have sought to exercise over our worship.

Your orders are in clear violation of our First Amendment rights. The Constitution and the rights enshrined therein are not suspended during a pandemic, and neither is our religion.

Please be advised that, beginning on May 10, 2020, our congregations will resume in-person church gatherings, and we will no longer adhere to the 10-person limit or the other unconstitutional restrictions comprised within your orders.

Our corporate worship is not only commanded by the Holy Scripture, but it has been a foundational element of religious duty in the Christian Church for over 2,000 years. This has been the sacred practice of the Romanian-American faith community in Chicago for decades. These gatherings are how we worship our God, and the means by which our soul is healed and restored.

We have not only a biblical mandate but also a legal right to meet. The prohibition on religious assembly and church worship services under various government COVID-19 closure orders have already been successfully challenged as a violation of the First Amendment.

In a decision issued on May 2, 2020, the Sixth Circuit Court of Appeal entered an injunction against Kentucky Governor Andy Beshear, and rebuked his unequal treatment of churches in his COVID-19 orders. *See Maryville Baptist Church, Inc. v. Andy Beshear*, Case No. 20-5427 (6th Cir.), copy available at <http://lc.org/PDFs/Attachments2PRsLAs/2020/050220MaryvilleBaptistIPA.pdf>.

The Sixth Circuit held that “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.” The Sixth Circuit also held that treating churches differently from other “essential” or “life sustaining” non-religious organizations and businesses violates the Constitution.

In a stunning rebuke of Governor Beshear’s constitutional overreach, which is similar to yours, the Sixth Circuit said that “while the law may take periodic naps during a pandemic, we will not let it sleep through one.”

Governor J.B. Pritzker

May 2, 2020

Page 3 of 4

In two other cases, the federal district courts have stated unequivocally that the government has no right to close churches, even in times of a pandemic, and certainly no right to treat churches unequally from other non-religious groups, organizations and business that are deemed “essential” and allowed to remain open. *See, e.g., On Fire Christian Center, Inc. v. Fischer*, No. 3:20-CV-264-JRW, 2020 WL 1820249 (W.D. Ky. Apr. 11, 2020) (“*On Fire*”); *First Baptist Church v. Kelly*, No. 20-1102-JWB, 2020 WL 1910021 (D. Kan. Apr. 18, 2020) (“*First Baptist*”). A copy of the court opinions in *On Fire* may be found at <http://lc.org/042920OnFireOpinion.pdf>, and in *First Baptist* may be found at <http://lc.org/042920FirstBaptistTRO.pdf>.

Both of these cases recognize that – even during COVID-19 – the government may not prohibit churches from hosting drive-in and parking lot worship services (*On Fire*), and may not prohibit churches from hosting in-person worship services on equal terms with other businesses and organizations that are permitted to remain open provided certain guidelines are practiced (*First Baptist*).

We recognize that you have limited gatherings with the stated goal of reducing the spread of COVID-19 and protecting medical staff. **We share this desire and commit to doing our part in protecting the physical well-being of all those who attend our church services.**

During the COVID-19 pandemic, we will implement protocols such as those recommended by the CDC, including but not limited to:

- (1) reduced seating for our in-person worship services;
- (2) our churches with moveable chairs will remove some of the chairs to maintain proper social distancing;
- (3) we will mark chairs or pews for use or non-use, and/or ushers can seat people with social distancing guidelines (while our family units can be seated together);
- (4) prior to and following any in-person service, our facilities will be sanitized;
- (5) attendees will be advised that, if they choose, they may wear masks and/or gloves;
- (6) attendees will be advised not to engage in hand shaking or other physical contact;
- (7) hand sanitizer will be available for use throughout the facility, and each person may be given a squirt of sanitizer or a sanitizer wipe upon entering;
- (8) we will have selected points of entry and exit separated from each other establishing a one-way traffic pattern;
- (9) our doors will be propped open or held open by ushers to prevent the need for congregants to touch doors while entering and exiting the church or sanctuary; and
- (10) we will ask anyone with any symptoms of COVID-19 illness, anyone who works in healthcare facilities that treat COVID-19 patients, and those that are elderly and/or with auto-immune issues to forego our in-person gatherings for a time.

These steps and others not enumerated here demonstrate our commitment to the well-being of the members of our congregations. This level of care and attention cannot be ordered by the state. We do this out of religious duty – it is our privilege to care for the bodies and the souls in our congregation, because no one can love our congregants more than we do.

Governor J.B. Pritzker

May 2, 2020

Page 4 of 4

We respectfully ask you to reverse the orders that discriminate against our churches and trample on our constitutional freedoms.

In the meantime, and until you reverse course, **we have authorized our legal counsel to immediately challenge your unconstitutional orders in federal court.**

And, irrespective of how long you or the Courts take to vindicate our inalienable and non-negotiable rights, and to return the Constitution from exile in our State, **our decision is settled: we will reopen our churches on May 10, 2020.**

We pray unceasingly for you, for our state and for our Nation. May our Lord God, the Author and Creator of Freedom, abundantly bless you with wisdom, and continue to bless and heal our Land.

Respectfully,



El Roi Romanian Baptist Church
200 N. Main, Mount Prospect, IL 60056
Pastor Rev. Sorin Sabou, Ph. D.



Elim Romanian Pentecostal Church
4850 N Bernard St, Chicago, IL 60625
Pastor Rev. Cristian Ionescu



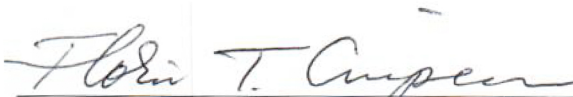
Emmanuel Romanian Pentecostal Church
4600 N Kilpatrick Ave, Chicago, IL 60630
Pastor Rev. Cosmin Ilioni



Golgota Romanian Pentecostal Church
10100 S 52nd Ave, Oak Lawn, IL 60453
Pastors: Rev. Pavel Sav and Rev. Constantin Lupancu

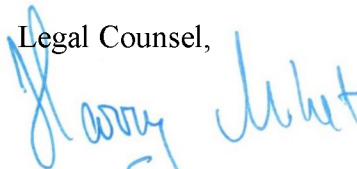
 *mike lozneanu*

Logos Romanian Baptist Church
7280 N Caldwell Ave, Niles, IL 60714
Pastor: Minister Daniel Chiu, Ph.D.
Chairman of the Board:
Rev. Mircea Lozneanu



Philadelphia Romanian Church of God
1713 W Sunnyside Ave, Chicago, IL 60640
Pastor: Rev. Bishop Florin T. Cimpean, M.Div.

Legal Counsel,



Horatio G. Mihet
Vice President of Legal Affairs and
Chief Litigation Counsel

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
Eastern Division**

ELIM ROMANIAN PENTECOSTAL)	
CHURCH, LOGOS BAPTIST)	
MINISTRIES,)	
)	
Plaintiff,)	Case No. <u>1:20-cv-02782</u>
)	
v.)	
)	
JAY ROBERT PRITZKER, in his)	
official capacity as Governor of the)	
State of Illinois,)	
)	
Defendant.)	

**SUPPLEMENTAL DECLARATION OF PASTOR CRISTIAN IONESCU
IN SUPPORT OF PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

I, CRISTIAN IONESCU, being first duly sworn and cautioned, hereby testify as follows:

1) I am over the age of 18 years, I have personal knowledge of the matters set forth in this declaration, and if called to testify upon these matters I would and could do so competently.

2) I am Senior Pastor of Elim Romanian Pentecostal Church, one of the Plaintiffs in this action. I submit this Supplemental Declaration to supplement the verified facts in Plaintiffs' Verified Complaint, and to bring to the Court's attention some factual developments since that Complaint was filed.

3) Today, Sunday May 10, 2020, Elim Church held a religious service on its premises (hereinafter "Sunday service"), as we indicated to Governor Pritzker that we would in our pre-suit communication, in which we requested that he permit us to hold the service subject to strict social distancing and health precautions that we indicated we would voluntarily undertake. (Dkt. 1-12).

4) Elim Church strictly complied with each of the 10 safety points on page 3 of our letter to Governor Pritzker. (Dkt. 1-12 at 3).

5) Because we wanted to be beyond reproach, and because we care deeply about the health and safety of our members and congregants, we even went many steps farther than we indicated in our letter.

6) For instance:

- a) On Saturday, May 9, we cordoned off with yellow tape approximately 85% of the 750 seats in our auditorium, leaving only approximately 120 seats (15%) available for attendees of our Sunday service, so that we can be sure that attendees are spaced at least 6 feet apart. The first 1 minute and 40 seconds of the video available at this link accurately depicts the auditorium with the blocked seats: <https://youtu.be/Ccwq9BTdUPc>.
- b) On Saturday, May 9, 2020, the day before the service, we hired a professional industrial cleaning company to thoroughly clean and disinfect our premises, including treatment for microbial and virologic agents. The first 1 minute and 40 seconds of the video available at this link accurately depicts the cleaning company at work in our auditorium: <https://youtu.be/Ccwq9BTdUPc>.
- c) In advance of the service, we requested any person with any symptoms of communicable illness, any person exposed to anyone diagnosed with COVID-19, and any person advanced in age or with secondary immunological conditions to refrain from attending our service.

- d) At the entrance to our Sunday service, we had our personnel take the temperature of each person wishing to be admitted into our service, with contactless thermometers. We are aware of commercial companies, such as Frontier Airlines, taking their customers' temperatures and refusing service to customers with temperatures above 100.4 degrees. (See <https://www.washingtonpost.com/travel/2020/05/07/frontier-just-became-first-us-airline-require-passenger-temperature-screening/>). Because we wanted to be extra-safe and beyond reproach, we instructed our personnel to refuse admittance to anyone with a temperature of above 99.5 degrees.
- e) At the Sunday service, we had to and did turn away several people after our designated capacity of 15% (120 seats) was filled.
- f) At the entrance to our Sunday service, we provided complimentary hand sanitizer, gloves and masks for anyone wishing to use them.
- g) At the Sunday service we created and strictly enforced a six-foot bubble zone around each person attending the service. Because we knew that media and other people would be watching our service and would be unaware of which people belong to the same household, and because we wanted to be above reproach, we even asked family members from the same household, who are not otherwise socially distanced off our premises, to generally maintain the six foot separation on our premises, so that no one will be confused or doubt our commitment to the health and safety of our congregants. Although there may have been a parent and child **from the**

same household that did come closer to each other than six feet, no persons who are not living together came closer to each other than six feet.

- h) The following picture accurately reflects our choir members, appropriately distanced, during our Sunday service:



- i) The following picture accurately reflects our congregation, appropriately distanced, during our Sunday Service



j) During our service, we requested our attendees to sing and pray in much lower and softer voices than they might otherwise.

7) Even though we voluntarily took these extensive precautions, we were extremely concerned that our service would be interrupted by law enforcement, and that I and other members would be arrested and hauled off to jail, because our service was held in violation of Governor Pritzker's 10-person limit that is discriminatorily applied against churches such as hours but not against other non-religious entities deemed essential, and because Governor Pritzker and law enforcement agencies promised enforcement through arrests, fines and other punitive and criminal measures.

8) Because the Governor's 10-person limit on churches – without regard to size or capacity, and without regard to any social distancing or safety measures – remains in effect, we continue to be very concerned that law enforcement agents will interrupt and interfere with our future services, and will arrest me and other members of the church.

9) The concerns we have about being fined, arrested, hauled off to jail or subjected to other punitive measures have interfered with and diminished our collective worship experience, to a much greater extent than COVID-19, and the precautionary measures we have voluntarily employed, ever could. Because of the threat of criminal arrest and punishment, we are unable to gather in peace and to worship God freely and without intimidation, according to our conscience.

10) The measures we voluntarily took for this Sunday service, we are willing to voluntarily take again – and will take again. No one is more concerned about the safety and health of our church members and attendees than we are.

11) We do not seek to make a political statement. We do not seek special treatment, such as to be able to meet for worship free of any precautionary measures. We only seek to be

treated equally with other “essential” places, so that – with proper safety precautions and social distancing that meet or exceed what the others are doing – we can corporately and collectively worship God according to our religious mandates and our conscience.

12) As long as Governor Pritzker’s 10-person limit remains in effect against our 750-seat church, and as long as the threat of criminal punishment hangs over us, we will not be able to do that freely, in peace and without intimidation. And thus, we will not be able to enjoy the freedom that many of our members fled an oppressive regime to be able to enjoy in this country.

I DECLARE under penalty of perjury that the foregoing is true and correct.

EXECUTED this May 10, 2020.

/s/ Cristian Ionescu
Pastor, Elim Romanian Pentecostal Church

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
Eastern Division**

ELIM ROMANIAN PENTECOSTAL)
CHURCH, LOGOS BAPTIST)
MINISTRIES,)

Plaintiff,)

v.)

JAY ROBERT PRITZKER, in his)
official capacity as Governor of the)
State of Illinois,)

Defendant.)

Case No. 1:20-cv-02782

**SECOND SUPPLEMENTAL DECLARATION OF PASTOR CRISTIAN IONESCU
IN SUPPORT OF PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

I, CRISTIAN IONESCU, being first duly sworn and cautioned, hereby testify as follows:

1) I am over the age of 18 years, I have personal knowledge of the matters set forth in this declaration, and if called to testify upon these matters I would and could do so competently.

2) I am Senior Pastor of Elim Romanian Pentecostal Church, one of the Plaintiffs in this action.

3) I have reviewed the photograph on page 4 of the Governor's Sur-reply filed today (dkt. 30), along with the accusation that church "leaders [were] standing six feet of each other" during the service on Sunday, May 20, 2020. (*Id.*). This accusation is both false and insulting.

4) The accusation is insulting because the two persons circled in red on this photo are me (on the right) and my assistant pastor (in the middle, at the pulpit). The Governor is essentially

accusing me of recklessness and hypocrisy, in that I went to great lengths to ensure that everyone else in our church was maintaining a six-foot distance, but I didn't follow this strict rule myself.

5) This is false. At no time during the Sunday service on May 10, 2020, did I come closer than six-feet from my assistant pastor. The picture attached by the Governor in his Sur-reply is misleading and deceptive, because it was clearly shot from the very back of our large church, and, from that distance, it suffers from perspective distortion and foreshortening. The image does not show that I am actually standing **behind** and to the right of the assistant pastor, at a distance of greater than six feet.

6) I know for certain that I was more than 6 feet away from the assistant pastor when this picture was taken, because I personally measured the distance from the pulpit where the assistant pastor is standing to the seat where I am standing – both before the Sunday service (wanting to make sure we would follow our strict social distancing rules), and after the Sunday service (today, to provide this response to the Governor's unjust accusation).

7) The following picture was taken today, and it shows that there are at least 80 inches from the pulpit where the assistant pastor was standing, to the seat where I was standing:



8) The following picture, also taken today, shows that there is a distance of seven feet between the two outside seats behind the pulpit, **which were the only two seats available for seating during our service**, because we cordoned the two middle seats (next to the table) with yellow tape to maintain social distancing:



9) Because pictures sometimes do not tell the entire picture, I also filmed this very short (1 minute 19 seconds) video demonstration today, showing the Court that the distance between the two available seats behind the pulpit is greater than six feet, and that the distance between my seat and the pulpit is greater than six feet. The video also shows how we have cordoned off the two middle seats behind the pulpit, to ensure six-foot distancing. This video is available here: <https://drive.google.com/open?id=1mnG8wRsLpGX4d0XJDSrxbg4d14O6nTER>.

10) This picture, taken during our Sunday Service on May 10, 2020, shows a better perspective of how the two outside seats (one of them in this instance) are actually behind the pulpit, and not next to it, as it incorrectly and misleadingly appears in the Governor's photo:



11) While I did not wear a mask **during** the Sunday service, I did wear a mask before and after the service.

12) I have watched countless press conferences given by Governor Pritzker and by Chicago Mayor Lori Lightfoot on the COVID-19 situation, and I have not seen either of them wearing a mask during their press conferences, despite the presence of reporters.

I DECLARE under penalty of perjury that the foregoing is true and correct.

EXECUTED this May 12, 2020.

/s/ Cristian Ionescu
Pastor, Elim Romanian Pentecostal Church



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

May 15, 2020

Dear Pastor Reverend Cristian Ionescu:

As you know, we are in unprecedented times. On March 11, 2020, the World Health Organization (WHO), characterized the current outbreak of COVID19 as a pandemic. Here in Chicago, as of May 14, 2020, we have seen more than 33,000 reported cases of COVID19 and more than 1,500 deaths.

It is against this backdrop that the State of Illinois remains under a “Stay at Home” order which was initially issued by Governor Pritzker on April 30, 2020, and subsequently extended. The intent of that order is to ensure the maximum number of people self-isolate in their places of residence to slow the spread of COVID-19 to the greatest extent possible. Let there be no doubt, despite the Stay at Home order and the cooperation and commitment of Chicago residents, Chicago is still seeing a rise in COVID19 cases and death. While we are bending the curve, we are not yet seeing a decline in daily cases. It is not just those that are deemed high-risk that are getting ill, even young and healthy people have been diagnosed with COVID19 and become ill.

The Stay at Home order permits individuals to leave their homes, however, in order to slow the spread of this disease, such exercise must comply with social distancing requirements which includes limiting gatherings of more than ten people. Thus, traditional faith-based services of more than ten individuals are not permitted at this time. Such religious services if held can result in the unintentional spread of the disease to our most vulnerable residents. Individuals attending such services may come into contact with an asymptomatic individual who may transmit the virus to others in attendance.

The City has announced a phased-in reopening plan that will allow for more interaction, when appropriate and following strict guidance. We are aware of, and sensitive to, the impact this order is having on the economy and communities but our over-riding goal is to protect our health system and residents, and we must continue to follow the proper guidance. Again, we remain under the Stay at Home order and must continue to comply with it.

It is important to note that if you, as the leader of your congregation, do not adhere to the order, the Chicago Department of Public Health (CDPH) has the authority to cite you or may cause any building or any premises to be cleansed, disinfected, or closed to visitors, investigated or

vacated. 8-4-010; 2-112-200; 2-112-210; 2-112-220 Municipal Code of Chicago, Ill. Similarly, the Governor's Executive Order has the force of law and is enforceable by law enforcement agencies in Chicago and throughout the state. The Chicago Department of Public Health (CDPH) has the authority, pursuant to the Department of Public Health Act (20 ILCS 2305/1-1.1 et seq.), the Civil Administrative Code of Illinois (Department of Public Health Powers and Duties Law) (20 ILCS 2310/1 et seq.) and the Control of Communicable Diseases Code (77 Ill. Adm. Code 690), to order that a location be closed and made off limits to the public "to prevent the probable spread of a dangerously contagious or infectious disease... until such time as the condition can be corrected or the danger to the public health eliminated or reduced in such a manner that no substantial danger to the public's health any longer exists." 20 ILCS 2305/2(b). The process of issuing such an order is set forth in 20 ILCS 2305/2(c).

As the Commissioner of the Department of Public Health for the City of Chicago, I consider the health, safety, and welfare of all Chicagoans as my utmost responsibility. I implore you to consider the deep responsibility you hold as a resident and as a pastor to those that depend upon you as leader.

I am hopeful that you, as a religious leader, share my goal of ensuring the safety of Chicago residents and your congregants in a collective and collaborative response to this disease and not hold in-person services until such time as the science and guidance from public health officials dictates that it is safe to do so.

Sincerely,

A handwritten signature in black ink, reading "Allison Arwady, MD". The signature is fluid and cursive, with the initials "MD" written at the end.

Allison Arwady, MD
Commissioner
Chicago Department of Public Health



ADMINISTRATIVE NOTICE OF ORDINANCE VIOLATION

In the City of Chicago Department of Administrative Hearings
City of Chicago, a Municipal Corporation, Petitioner, vs.

Respondent if Chicago Business, use name on license				Last Name, First Name		MI
ELIM ROMANIAN PENTECOSTAL CHURCH						
Resp. Address No.	Dir.	Street Name	ST Suffix	Apt./Ste.		
4850		N BERNARD				
City			State	ZIP		
CHICAGO			<input checked="" type="radio"/> IL <input type="radio"/> Other:	60625		
Person Served if other than the respondent				Last Name, First Name		MI
IONESCU CRISTIAN						
Mobile/Cell Phone Number			Acct./DREV No. or Inventory No. if applicable			
847 636 1747						
Identification			DLN State	D.O.B. (M/D/Y)		
<input checked="" type="radio"/> DLN/ID <input type="radio"/> Other: IS2010063134			<input checked="" type="radio"/> IL <input type="radio"/> Other:	05/10/63		
Height	Weight	Sex	Race	Eyes	Hair	Event/IRD#
660	197	M	2	BLU	GRY	09275/SD237649

STEP 1: Officer, Investigator, Inspector, and/or Complainant on oath states that the Respondent did then and there violate the following section(s) of the Municipal Code of Chicago:

P005896778 16

COUNT	DRINKING ALCOHOL ON THE PUBLIC WAY 8-4-030(a)	COUNT	POSSESSION OF CANNABIS-UP TO 15 GRAMS 7-24-099(a)
	PUBLIC URINATION 8-4-081(a)		RIDING BICYCLES ON SIDEWALKS AND CERTAIN ROADWAYS 9-52-020(b)
	ALCOHOL ON PARK DISTRICT PROPERTY 10-36-185 Ch. VII B.7	OTHER: TITLE CHA SEC.	RULE OR SUB
	AFTER HOURS - PARK DISTRICT PROPERTY 10-36-185 Ch. VII B.2	18-9-010	e
	SMOKING ON THE CTA 10-8-526/016-110-1.18	OFFENSE (if other): DISORDERLY CONDUCT	
	DRINKING ALCOHOL ON CTA 10-8-526/016-110-1.04		
	FALSE BURGLAR ALARM 8-4-056(b)		

STEP 2: You Must Describe Actions for Each Count below:

Count 1, In That: DURING THE WEEK OF 10 MAY 20 -
16 MAY 20, A WRITTEN WARNING WAS
DELIVERED TO ALL PLACES OF WORSHIP BYCount 2, In That: THE CITY OF CHICAGO RELATING THAT IF CHURCHES
PROCEEDED WITH GATHERINGS, THEY WOULD BE CITED.
THIS 9AM SERVICE HAD 97 CONGREGANTS PRESENT.

Violation Location Nos.		Dir.	Street Name	in the City of Chicago, County of Cook		ST Suffix
4850			N BERNARD			
Vio. Date: Mo/Day	Year	Time of Violation	<input checked="" type="radio"/> AM <input type="radio"/> PM	Notice Date: Mo/Day if different than Vio. Date	Year of Notice	
05/17	2020	9:00		05/20	2020	
Complainant's Name if not issuing officer, investigator, or inspector					CPD-11.497A Version A: 05/08/17	
Unit	Star / Badge	Signature of issuing officer, investigator, or inspector				
215	70	X [Signature]				

Administrative Hearing Appearance

IMPORTANT: UNLESS YOU HAVE BEEN ISSUED A MAIL-IN OPTION VIOLATION YOU MUST APPEAR FOR A MANDATORY HEARING ON:

Date: Mo/Day	Year	Time	<input type="radio"/> AM <input checked="" type="radio"/> PM	at: <input checked="" type="checkbox"/> 400 W. Superior	Room No.
08/12	2020	2:00			206

FAILURE TO APPEAR may result in the imposition of a fine not to exceed the maximum penalties for each violation as specified in the Municipal Code of Chicago plus costs, restitution, and fees. Failure to comply with the Administrative Law Judge's order may result in the issuance of additional sanctions. Failure to pay the fine or appear may also subject you to further prosecution in Cook County Circuit Court for violation of Section 1-4-145 of the Municipal Code of Chicago.

I acknowledge receipt of this notice.

Signature of

Respondent or

Person Served: X [Signature]

Comments

P



ADMINISTRATIVE NOTICE OF ORDINANCE VIOLATION
In the City of Chicago Department of Administrative Hearings
City of Chicago, a Municipal Corporation, Petitioner, vs.

Respondent if Chicago Business, use name on license Last Name, First Name MI

ELIM ROMANIAN PENTECOSTAL CHURCH

Resp. Address No. Dir. Street Name ST Suffix Apt./Ste.

4850 N BERNARD

City State ZIP

CHICAGO IL 60625

Person Served if other than the respondent Last Name, First Name MI

IONESCU CRISTIAN

Mobile/Cell Phone Number Acct./DREV No. or Inventory No. if applicable

847 636 1744

Identification DLN/ID DLN State D.O.B. (M/D/Y)

IS2010063134 IL 05/10/63

Height Weight Sex Race Eyes Hair Event/IRD#

6'00 197 M 2 BLU GRAY 09297/50237650

STEP 1: Officer, Investigator, Inspector, and/or Complainant on oath states that the Respondent did then and there violate the following section(s) of the Municipal Code of Chicago:

P005896779 17

COUNT		COUNT	
	DRINKING ALCOHOL ON THE PUBLIC WAY 8-4-030(a)		POSSESSION OF CANNABIS-UP TO 15 GRAMS 7-24-099(a)
	PUBLIC URINATION 8-4-081(a)		RIDING BICYCLES ON SIDEWALKS AND CERTAIN ROADWAYS 9-52-020(b)
	ALCOHOL ON PARK DISTRICT PROPERTY 10-36-185 Ch. VII B.7		OTHER: TITLE CHA.SEC. RULE OR SUB
	AFTER HOURS - PARK DISTRICT PROPERTY 10-36-185 Ch. VII B.2	1	8-4-010 e
	SMOKING ON THE CTA 10-8-526/016-110-1.18		OFFENSE (if other):
	DRINKING ALCOHOL ON CTA 10-8-526/016-110-1.04		DISORDERLY
	FALSE BURGLAR ALARM 8-4-056(b)		CONDUCT

STEP 2: You Must Describe Actions for Each Count below:

Count 1, In That: DURING THE WEEK OF MAY 20 -
16 MAY 20, A WRITTEN WARNING WAS
DELIVERED TO ALL PLACES OF WORSHIP BY

THE CITY OF CHICAGO RELATING THAT IF CHURCHES
PROCEEDED WITH GATHERINGS, THEY WOULD BE CITED.
THIS 6PM SERVICE HAD 87 CONGREGANTS PRESENT.

Violation Location Nos. Dir. Street Name in the City of Chicago, County of Cook ST Suffix

4850 N BERNARD

Vio. Date: Mo/Day Year Time of Violation AM PM Notice Date: Mo/Day Year of Notice

05/17 2020 6:00 PM 05/20 2020

Complainant's Name if not issuing officer, investigator, or inspector CPD-11.497A
Version A: 05/08/17

Unit Star/Badge Signature of issuing officer, investigator, or inspector

215 70X

Administrative Hearing Appearance

IMPORTANT: UNLESS YOU HAVE BEEN ISSUED A MAIL-IN OPTION VIOLATION YOU MUST APPEAR FOR A MANDATORY HEARING ON:

Date: Mo/Day Year Time AM PM at: 400 W. Superior Room No.

08/12 2020 2:00 PM 206

FAILURE TO APPEAR may result in the imposition of a fine not to exceed the maximum penalties for each violation as specified in the Municipal Code of Chicago plus costs, restitution, and fees. Failure to comply with the Administrative Law Judge's order may result in the issuance of additional sanctions. Failure to pay the fine or appear may also subject you to further prosecution in Cook County Circuit Court for violation of Section 1-4-145 of the Municipal Code of Chicago.

I acknowledge receipt of this notice.
Signature of Respondent or Person Served: X Cristian Ionescu

Comments P

OTHER COMPLAINTS
ISSUED
NO.

BOND
DEPOSITED
NO.

OTHER COMPLAINTS
ISSUED
NO.

BOND
DEPOSITED
NO.

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

COMPLIANCE VIOLATION NUMBER

PO-132229

#2020-13882

						COURT KEY	
						STAR # 11	
						HEIGHT AND WEIGHT 5'07 130	
DAY OF WEEK ON SUN	MO/DAY/YR 5/17/20	TIME AT 10:10 A M	Did then drive and operate a certain motor vehicle, to wit, a	MAKE -	YEAR -	<input type="checkbox"/> AUTO <input type="checkbox"/> TRUCK <input type="checkbox"/> BUS <input type="checkbox"/> TAXI <input type="checkbox"/> M/CYCLE	<input type="checkbox"/> MODEL <input type="checkbox"/> COLOR
UPON A PUBLIC HIGHWAY OF THIS STATE, TO WIT,		BOUND ON	FROM AT 7280 N. CALDWELL AVE.	EMPLOYER OR SCHOOL LUGOS BAPTIST CHURCH			
SITUATED WITH THE TOWNSHIP, TOWN OR CITY AFORESAID IN COOK COUNTY, ILLINOIS, AND DID THEN AND THERE UNLAWFULLY VIOLATE SECTION 66-77				<input type="checkbox"/> (T.R. ORDINANCE) <input type="checkbox"/> (VEHICLE CODE) <input type="checkbox"/> (OTHER)	STATE LICENSE PLATE NO.		
By (Describe) DISORDERLY CONDUCT / VIOLATION OF EXECUTIVE ORDER 2020-30						<input type="checkbox"/> COM. MTR. VEH	<input type="checkbox"/> PLACARDED HAZ. MAT. VEH.

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

You may, BEFORE DUE DATE:

DUE DATE 6-16-20

Officer [Signature] Star No. 11

WITHOUT ADMITTING GUILT I ACKNOWLEDGE RECEIPT OF THIS CITATION

X

Penalty for this violation if Payment is

Received BEFORE DUE DATE:

NOT Received BEFORE DUE DATE

\$100.00

\$200.00

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

- 1) Mail the amount indicated at the right in this envelope
- 2) Pay in person at location shown on the reverse side or
- 3) Appear in person at location shown on the reverse side to request a hearing

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

FIRST VIOLATION

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

COMPLIANCE VIOLATION NUMBER

PO-132230

#2020-13882

						COURT KEY	
						STAR # 11	
						HEIGHT AND WEIGHT 5'07 130	
DAY OF WEEK ON SUN	MO/DAY/YR 5/17/20	TIME AT 5:10 P M	Did then drive and operate a certain motor vehicle, to wit, a	MAKE -	YEAR -	<input type="checkbox"/> AUTO <input type="checkbox"/> TRUCK <input type="checkbox"/> BUS <input type="checkbox"/> TAXI <input type="checkbox"/> M/CYCLE	<input type="checkbox"/> MODEL <input type="checkbox"/> COLOR
UPON A PUBLIC HIGHWAY OF THIS STATE, TO WIT,		BOUND ON	FROM AT 7280 N. CALDWELL AVE.	EMPLOYER OR SCHOOL LUGOS BAPTIST CHURCH			
SITUATED WITH THE TOWNSHIP, TOWN OR CITY AFORESAID IN COOK COUNTY, ILLINOIS, AND DID THEN AND THERE UNLAWFULLY VIOLATE SECTION 66-77				<input type="checkbox"/> (T.R. ORDINANCE) <input type="checkbox"/> (VEHICLE CODE) <input type="checkbox"/> (OTHER)	STATE LICENSE PLATE NO.		
By (Describe) DISORDERLY CONDUCT / VIOLATION OF EXECUTIVE ORDER 2020-30						<input type="checkbox"/> COM. MTR. VEH	<input type="checkbox"/> PLACARDED HAZ. MAT. VEH.

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

You may, BEFORE DUE DATE:

DUE DATE 6-16-20

Officer [Signature] Star No. 11

WITHOUT ADMITTING GUILT I ACKNOWLEDGE RECEIPT OF THIS CITATION

X

Penalty for this violation if Payment is

Received BEFORE DUE DATE:

NOT Received BEFORE DUE DATE

\$100.00

\$200.00

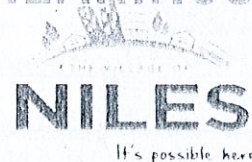
Mail Payments to: NILES VIOLATION BUREAU, 7000 W. Touhy Ave., Niles, IL 60714

- 1) Mail the amount indicated at the right in this envelope
- 2) Pay in person at location shown on the reverse side or
- 3) Appear in person at location shown on the reverse side to request a hearing

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

2ND VIOLATION

NILES ADMINISTRATIVE HEARINGS



POLICE ADJUDICATION HEARING RESPONDENT REQUEST FOR HEARING

I have been issued Citation(s) PO- 132229 ; Additional Citations 132230 ; _____ ; _____ ; _____

I reject the terms that are listed on the front of my citation copy (settling the citation(s) by paying the fine amount).

I hereby request that an Administrative Hearing be assigned to this case so that I can appear at the Hearing before a Hearing Officer on this matter. I understand that I will be responsible to satisfy ALL FINES imposed by the Hearing Officer. If found liable, I understand that fines may exceed the original citation fine(s) including but not limited to court fees. I will have all documents with me at the Hearing to present to the Hearing Officer, to prove my case.

I understand that my FAILURE TO APPEAR or my FAILURE TO SATISFY FINES that may be imposed at the Hearing may result added fines against me. If I fail to pay my fines I will be sent to a collection agency which will cause my credit rating to lower. If I continue to ignore my adjudicated fines my vehicle can be immobilized, impoundment, and/or suspension of my driver's license. If any license is suspended by order of the Hearing Officer, I am responsible for any reinstatement expenses that are required to restore my driving privileges.

Administrative Hearing Date: JULY 14, 2020

Circle Time: 9:00 A.M. or 10:00 A.M.

Address: 1000 Civic Center Drive

Niles, IL. 60714

(Corner of Oakton and Waukegan Rd)

Parking related violations

10:00 A.M.

Juveniles/Non-Traffic violations

9:00 A.M.

Hearing Dates: 3rd Tues/Thurs of the month. Hearing may last up to 2 hours. Please allow yourself sufficient time.

NAME ON CITATION: _____

NAME OF REQUESTOR: CHIU DANIEL

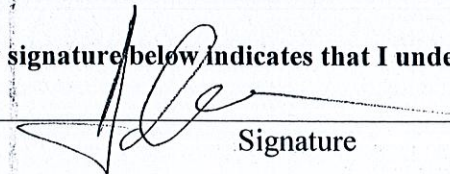
ADDRESS: 8272 N. OZANAM AVE

CITY, ZIP: NILES 60714

TELEPHONE: 847-219-8590

My signature below indicates that I understand the terms set forth herein, and I agree to comply with them.

X


Signature

05.18.2020

Date

The Administrative Hearing Division reserves the right to change hearing dates and/or times we will notify you of any changes. Please call Records Clerk Boyer at 847/588-6523 or e-mail rb@vniles.com

One (1) COPY to the defendant
ORIGINAL to N.P.D. Records Division

OFFICE USE ONLY
Desk Officer or Clerk: UB #312
Date Rec'd: 5/18/20



Hand delivered

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

May 22, 2020

Dear Pastor Reverend Cristian Ionescu:

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

As you may know, here in Chicago, we have lost three faith leaders to Coronavirus Disease 2019 (COVID-19) and many more congregants who have been linked to churches with clusters outbreaks. In February 2020, the CDC reported¹ that one COVID-19 positive individual experiencing mild respiratory symptoms, unknowingly spread COVID to 16 people, ages 5 to 86 years, after attending a church funeral and a birthday party. Three of those individuals tragically died from the disease.

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

¹ "Community Transmission of SARS-CoV-2 at Two Family Gatherings — Chicago, Illinois, February–March 2020."

www.cdc.gov/mmwr/volumes/69/wr/mm6915e1.htm?s_cid=mm6915e1_w

² "High COVID-19 Attack Rate Among Attendees at Events at a Church — Arkansas, March 2020."

https://www.cdc.gov/mmwr/volumes/69/wr/mm6920e2.htm?s_cid=mm6920e2_w

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

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

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

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

"If the person so notified shall neglects, refuses or otherwise fails to comply with any of the requirements of such order within the time specified in the notice required under this section, such person shall be fined not less than \$250.00 nor more than \$500.00 for each such offense. Each day that a violation continues shall constitute a separate and distinct offense to which a separate fine shall apply."

* * * "In addition to any fine or other penalty provided by law, the person who created, continued or suffered the nuisance to exist shall be liable to the city for any and all costs and expenses incurred by the city in abating the nuisance, plus a penalty of up to three times the amount of the costs and expenses incurred by the city." Chi. Muni. Code § 7-28-010.

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

Sincerely,

A handwritten signature in black ink that reads "Allison Arwady, MD". The signature is fluid and cursive, with the initials "MD" written in a smaller, more formal script at the end.

Allison Arwady, MD
Commissioner
Chicago Department of Public Health



Deposition of:
6/12/20 Hearing

September 18, 2020

In the Matter of:
**20-1811 Elim Pentecostal Church Vs.
Jay Pritzker**

Veritext Legal Solutions
800-734-5292 | calendar-dmv@veritext.com |

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I N D E X

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REBUTTAL ARGUMENT, BY MR. MIHET	31

P R O C E E D I N G S

(NOTE: No reporter notes received; therefore, cannot identify which judge is speaking; all noted as "The Court").

THE CLERK: The Honorable Judges of the United States Court of Appeals in and for the 7th Judicial Circuit. Hear ye, hear ye, hear ye. All persons having business before this Honorable Court are admonished to draw near and give their attention, as the Court is now sitting. God save the United States and this Honorable Court.

THE COURT: Good afternoon, ladies and gentlemen. We are ready to hear oral arguments in the case of Elim Romanian Pentecostal Church against Pritzker.

Mr. Mihet?

MR. MIHET: Good afternoon, Your Honors. Horatio Mihet, for the Appellants. I would reserve 6 of my 20 minutes for rebuttal, please.

May it please the Court, this Court should reverse the District Court's denial of a preliminary injunction, because this appeal is not moot and because the governor's disparate ten-person limit on worship services is subject to strict scrutiny and cannot overcome it. Now, this appeal is

1 not moot for two reasons. Number one, the governor
2 has left himself complete and total discretion to
3 return to the old policy, and number two, the dispute
4 is one that is capable of --

5 (Audio gap)

6 THE COURT: Hello? Hello? Hori?

7 MR. MIHET: And, number two, because
8 this dispute is capable of repetition and, yes,
9 evading review. Taking them in turn, number one, the
10 governor has not disclaimed his intent to return to
11 the old policy, and the governor has not disavowed the
12 legality of his policy. On the contrary, he is
13 vigorously defending it before this Court, before the
14 lower court, and also at the Supreme Court.

15 Now, the most that the governor can say
16 is that it is speculation for us to surmise what he
17 will do next and what -- what it is that he won't tell
18 us. However, that shifts to -- that shifts the burden
19 to the appellants, when, in fact, the Supreme Court
20 said in *Already v. Nike* that it is the governor who
21 has a burden, and is a formidable burden, of making it
22 absolutely clear that he will not return to the
23 allegedly wrongful conduct. The governor has not done
24 that here. He has not submitted an affidavit
25 disclaiming any intent to return to the policy. He

1 has not said that he has seen the error of his ways
2 and -- and will not return.

3 In fact, --

4 THE COURT: Mr. Mihet?

5 MR. MIHET: Yes, Your Honor?

6 JUDGE HAMILTON: This is Judge
7 Hamilton. If we were to agree with you on the merits
8 and agree that this is not moot, what do you think an
9 injunction should actually say that would issue now?

10 MR. MIHET: The injunction would enjoin
11 the government from enforcing Order 32 either now or
12 in any eventual reiteration or resurfacing of that
13 order. So it would prohibit the governor from
14 employing any measures that treat the churches
15 disparately, whether in Order 32 or some other order.

16 And so, what I'd say is, in Trinity
17 Lutheran, the Supreme Court said that the matter was
18 not moot, because there is clearly -- there was no
19 clearly-effective barrier that would prevent the
20 department from reinstating its policy. Well, that
21 same -- that same thing is -- is true here. There is
22 no barrier for the governor to return back to the
23 policy, and, in fact, if you look at the governor's
24 Executive Order 38, which was the most recent one
25 passed on May 29, the one that announced the change in

1 policy, the whereas clauses in t he first 2 pages of
2 that order are chock full of dire, dire warnings that
3 indicate that the governor is still very concerned
4 about the situation, still -- he says that -- that the
5 situation is such that the health care resources are
6 taxed, are over-taxed, and even the peak of this virus
7 has not happened yet, according to the governor. And
8 so, for all of those reasons, it remains likely that
9 the governor can and will return back to the policy,
10 and I also would be remiss if I didn't point out that
11 the timing of the policy change is very suspect,
12 because this policy change was announced mere hours
13 before the governor was called to give an account at
14 the Supreme Court, before Supreme Court Justice
15 Cavanaugh, and the only change that took place is to
16 relieve the churches, and only the churches of the
17 ten-person limit. Everybody else that didn't
18 challenge the policy and -- which everyone else whose
19 restriction the governor did not have to justify at
20 the Supreme Court was not relieved of that
21 restriction.

22 Now, in the governor's five-phase plan,
23 it was not until phase five that the restrictions were
24 supposed to go away, and the governor said that was
25 going to take place 12 to 18 months down the road. In

1 fact, he said there would be -- one of three
2 conditions would have to -- to happen. Either a
3 vaccine would be developed, or a therapeutic treatment
4 would be developed, or there would be no new cases for
5 a significant period of time. You can see that on the
6 last page of Exhibit C, in Appendix No. 2.

7 Well, indisputably, none of those
8 conditions took place or happened by May 29, when the
9 governor issued this -- this new order. And so, for
10 those reasons, there's no doubt here that the governor
11 hasn't had a change of heart. This is just a
12 litigation-driven change of policy maintaining
13 complete and total discretion to return back.

14 The second reason why this case is not
15 moot is because the dispute is capable of repetition
16 yet evading review. In our motion to dismiss
17 opposition, we have on page 5 a chart that traces the
18 -- the various iterations of these orders and shows
19 that the average life span is less than 30 days. Some
20 iterations were only in effect for 10 days, and on
21 page 15 -- 16, rather, of our opposition, we have 4
22 Supreme Court cases. Two of them say that two years
23 is too short. One says 18 months is too short, and 1
24 says 1 year is too short. If that is the case, then
25 30 days or 10 days is definitely too short for a

1 dispute to be fully played out.

2 And the last thing I'll say about this
3 is the governor only cites to the Supreme Court case
4 of Kern (ph), which was on page 17 of its brief, on
5 this capable of repetition issue. Kern was based on
6 the premise from the Supreme Court where the Supreme
7 Court says, quote, "Defendants' good faith
8 representation that they had no intention of returning
9 to the old policy might have properly led to the
10 denial of injunctive relief," end quote. We do not
11 have any such representation here from the governor.
12 For all of these reasons, this case is not moot, and
13 this Court should reach the merits.

14 And so, moving to the merits, in our
15 briefs, we explained several reasons why we get to
16 strict scrutiny in this case. I will focus on the
17 free exercise path right now, and in Lukume (ph), the
18 Supreme Court held that a law falls well below the
19 minimum standard necessary to protect First Amendment
20 rights when it's nailed --

21 THE COURT: Mr. Mihet? Mr. Mihet?

22 MR. MIHET: Yes, Your Honor?

23 THE COURT: Excuse me. If we were to
24 get to strict scrutiny, you've conceded the compelling
25 state interest, I believe, and I guess my -- my

1 question is how should courts, as you see it, enforce
2 the requirements that restrictions be narrowly
3 tailored in the least restrictive means available, as
4 it in the cases of an infectious disease pandemic?
5 Are they required to first try less restrictive
6 measures and wait and see if they fail? Are they
7 required to try the -- in our federal system, the
8 least restrictive governor's approach, so that we can
9 go with the lowest common denominator, as a matter of
10 constitutional mandate?

11 MR. MIHET: Under the Supreme Court's
12 teaching of McCoomey (ph) and also the Bruney (h) case
13 out of the Third Circuit, the -- the governor would
14 have to, either try other measures and -- and
15 determine that they do not work, or, if the exigencies
16 --

17 THE COURT: That sounds crazy.

18 MR. MIHET: Well, the other alternative
19 -- if the exigencies are such that that cannot be
20 done, what the governor would have to do is, quote,
21 "seriously consider other alternatives" and make out a
22 compelling case as to why they would not work. And
23 so, either you try them, or if you cannot try them,
24 you have to show in the record that you actually
25 seriously considered them and found them wanting for

1 good reason. It's not enough to simply say that you
2 considered them. It's not enough to simply say that
3 they would not work. You have to have compelling
4 evidence that you have a -- a -- a compelling
5 justification to treat religious exercise disparately.

6 And let me say something -- and this is
7 what makes these -- this particular Order 32 so
8 offensive, from a constitutional standpoint. This
9 particular order doesn't just exempt 23 other
10 categories of -- of businesses from the -- the 10-
11 person requirement, but if you look on page 8 of
12 Executive Order 32, this essentially talks --

13 THE COURT: Well, Counsel, --

14 MR. MIHET: Yes, Your Honor?

15 JUDGE EASTERBROOK: This is Judge --
16 this is Judge Easterbrook. The argument you're now
17 making, like much of your brief, supposes that there
18 is discrimination against religion, which is what you
19 contend takes this case outside the scope of Smith. I
20 wonder whether it's proper to suppose that as opposed
21 to argue it.

22 If you look at the case, the California
23 case, when it got to the Supreme Court, the dispute
24 between the Chief Justice and the dissenting opinions
25 dealt with what the right comparison group was to find

1 out whether there was religion (sic). The Chief
2 Justice thought the right comparison group was
3 something like concerts or movies, and the dissent
4 thought the right comparison group was something like
5 grocery stores. It seems to me we need to start
6 there. Why is it that you think the right comparison
7 group is grocery stores or law offices?

8 MR. MIHET: For -- for two reasons,
9 Your Honor. Number one, even grocery stores and
10 warehouses -- they will have dozens and dozens,
11 perhaps sometimes hundreds of employees working
12 together for eight hours, ten hours or more per day
13 without any limitation. They would be able to have
14 employee meetings. So it's incorrect to simply look
15 at the shopper, and -- and -- and I wouldn't even
16 accept the -- the premise that all shoppers only go
17 inside Walmart for ten minutes.

18 I -- I think that several of them could
19 -- could spend a lot more time there. Certainly, no
20 legal requirement that they only go in for a certain
21 amount of time, but the employees are there for hours
22 and hours of time. They have -- there is no
23 restriction upon them, in terms of having employee
24 meetings, in terms of interacting with customers,
25 touching the same products, the same credit cards, the

1 same cash. In all of those respects, these places are
2 actually more dangerous than a properly-distanced
3 church service, where people are six feet apart and --
4 and where things have been properly sanitized. The
5 basic error that is being made in these comparisons is
6 that that is seems like some people are willing to
7 assume that -- that folks would change their behavior
8 at Walmart, but then at church, they would continue to
9 do what they've always done before this virus, which
10 is to have close meetings or to have handshaking or
11 hugging or all those other things, when, in fact,
12 people at church are the same people that go to
13 Walmart, and they can adjust that conduct at church,
14 too.

15 But the other point that I really want
16 to make, which is really, really important here, and
17 -- and makes this case very different from what Chief
18 Justice Roberts was commenting upon in California.
19 Here, if you look on page 8 of Executive Order 32,
20 this is Section 2.12, Subsection C. What this
21 executive order does is it removes the ten-person
22 limit on churches when they are engaged in non-
23 religious activity, such as, for example, feeding the
24 hungry or housing the homeless overnight. So under
25 this -- this order, a church could have 500 people in

1 its auditorium and feed them a meal or house them
2 overnight, and under the Subsection C, they have no
3 numerical limit, but as soon as that gathering turns
4 into a worship service, a religious service, then they
5 are no longer considered engaging in a protected
6 activity. The ten-person limit kicks in, and now you
7 have criminal punishment that's subject.

8 If that's not a content-based
9 restriction, if that's not a -- a discriminatory
10 provision that punishes churches only when they engage
11 in religious conduct -- you know, the virus doesn't
12 know why the people are there for. Then I can't
13 imagine what else would suffice, and I would submit
14 that Chief Justice Roberts did not have that kind of
15 an opinion beforehand.

16 The other thing I'd say about the --
17 the California case, Chief Justice Roberts there, and
18 the whole Court -- they were very concerned with the
19 exceedingly high burden that you have when you
20 approach the Court on an emergency motion, such as was
21 the case there. Here, before Your Honors, we're on a
22 traditional interlocutory appeal, where the
23 plaintiffs' burden is merely to show a more than
24 negligible chance of success on the merits. I submit
25 to you that there is no way in our Constitution, under

1 our Constitution, that this Subsection C, that this
2 order that discriminates against only religious use of
3 church property in such a profound manner can survive,
4 and I see that my time is up. I'm happy to continue,
5 if the Court will allow, or stop here.

6 THE COURT: Counsel, your time isn't
7 up. If you're into your rebuttal time and you're --

8 MR. MIHET: Oh, I'm sorry. I'm sorry.
9 I thought that my time was up, but I'm happy to --

10 UNIDENTIFIED SPEAKER: He said you had
11 rebuttal.

12 MR. MIHET: Yeah, just to save the rest
13 of my time for rebuttal.

14 THE COURT: Certainly, Counsel.

15 Ms. Gupta?

16 MS. GUPTA: Good afternoon, and may it
17 please the Court. Assistant Attorney General Priyanka
18 Gupta, for Defendant/Appellee Governor Pritzker. I'd
19 like to first start by talking about why this appeal
20 is moot, and begin by clarifying the voluntary
21 cessation standard.

22 The standard there is that we need to
23 show that it is clear that there could not be a
24 reasonable expectation of this type of restriction
25 being imposed on the future. The standard does not

1 require the Government to disavow any conduct that
2 they've taken in the past or make clear that they will
3 never take it again in the future. In Federation
4 Advertising, this Court explained that it does not
5 presume bad faith on the part of the Government. So
6 when there has been a voluntary cessation of activity
7 by the Government, this Court will look instead to see
8 whether the reasons for stopping the activity were
9 genuine and therefore, cannot reasonable be expected
10 to reoccur.

11 And here, we have made that showing for
12 at least four reasons. The first is that the
13 governor's decision to lift the restrictions in E.O.
14 38 on religious gatherings were tied to the data and
15 the situation in Illinois. The order explained that
16 the infection rate --

17 JUDGE EASTERBROOK: Counsel? Counsel,
18 this is Judge Easterbrook. That's exactly what
19 worries me. The governor's decision, he said, was
20 tied to the current situation. If cases of Corona
21 Virus spike in Illinois, is there anything to prevent
22 the governor from changing course?

23 MS. GUPTA: Your Honor, there is not,
24 but there are reasons to believe that this level of
25 restriction wouldn't be necessary, even if we were hit

1 with a second wave, and that's because we already know
2 a lot more about this virus than (indiscernible)
3 already do.

4 JUDGE EASTERBROOK: I'm not -- look,
5 I'm -- I'm not worried about what's necessary or what
6 the governor is likely to conclude. If I understand
7 the Supreme Court's test, it's something like whether
8 it is absolutely clear that the alleged wrongful
9 behavior could not reasonably be expected to recur.
10 And that's a quotation from one of the Supreme Court's
11 decisions. I wonder how it is absolutely clear that
12 it can recur if the governor is reserving his right to
13 change the rule when the date change.

14 MS. GUPTA: Well, Your Honor, I think
15 Federation Advertising is helpful again, here, because
16 there, the City of Chicago had repealed the challenge
17 ordinance while litigation was ongoing and had
18 proposed a new one, and this Court found that that
19 proposal was not enough to show that there was a
20 reasonable expectation of the conduct reoccurring for
21 two reasons. The first is that the ordinance seemed
22 different and second, it was simply a proposal, and
23 there the City had not disavowed its previous repeal
24 order. So here, the governor has not even proposed
25 that he will impose such a restriction on religious

1 gatherings, nor has he said that he would treat
2 religious gatherings different from the secular
3 gatherings that plaintiffs challenge. We have too
4 many unknown variables right now.

5 So the -- the mere possibility that
6 this type of restriction might be necessary on
7 religious gatherings and that it might operate in the
8 same way with regards to secular gatherings is not
9 enough to show a reasonable expectation. And so,
10 that's why we've made it absolutely clear, because the
11 governor's actions have always been tied to scientific
12 --

13 THE COURT: I -- I wish -- Counsel, I
14 wish you would deal with this in the Supreme Court's
15 terms. It is not the plaintiff's burden to show a
16 reasonable expectation of anything. It is the
17 defendant's burden, the Supreme Court says, to make it
18 absolutely clear that the allegedly wrongful behavior
19 could not reasonably be expected to recur, and I wish
20 you would address that standard, which is the Supreme
21 Court's standard.

22 MS. GUPTA: Your Honor, we've made it
23 absolutely clear that this restriction is not
24 reasonably expected to recur, because the governor's
25 actions have always been tied to medical research, and

1 now we know a lot more about the virus. For example,
2 we know that it doesn't transmit as easily outdoors or
3 even indoors if the window is open or there is more
4 ventilation. And as we've learned more about the
5 virus, the governor --

6 THE COURT: So -- so you say --

7 MS. GUPTA: -- has (indiscernible).

8 THE COURT: Now, you say we now know
9 enough about the virus. So is the governor willing to
10 make an iron-clad commitment not to rescind the
11 current order?

12 MS. GUPTA: No, Your Honor, we are not.
13 Not --

14 THE COURT: On basis -- well, if we --

15 MS. GUPTA: Your Honor, --

16 THE COURT: If, as you say, we now know
17 enough about the virus to be sure, why won't the
18 governor make such a commitment?

19 MS. GUPTA: Because, Your Honor, this
20 virus has been so unprecedented that, even though we
21 know more about the virus, there's still a lot more
22 for us to learn. So if the governor were to make such
23 a declaration, which I, again, point out was not
24 required by the Supreme Court's standard, then the
25 possibility is still out there, even though it's

1 hypothetical, that a new strain of this virus could
2 come by in Illinois and more restrictions would be
3 necessary. But even if this Court finds that the
4 voluntary cessation exception applies here and would
5 like to go to the merits of this case, we still think
6 that a preliminary injunction is not necessary here,
7 and that's first, because the Jacobson (ph) framework
8 applies here.

9 This is an emergent situation, the
10 likes of which the world has not seen before, and the
11 governor --

12 JUDGE EASTERBROOK: Okay, okay.
13 Counsel, I want to ask you the same question that I
14 asked your adversary, which is how do we determine the
15 right comparison group if we're trying to apply the
16 Smith standard and look for neutrality in treatment
17 between religion and non-religion, what is the right
18 comparison group? The Chief Justice and the
19 dissenting justices in the California case took very
20 different views about that, and the plaintiff's lawyer
21 just invoked warehouses, where people congregate for
22 long periods. I'd like you to explain why, in your
23 view, that's not a good comparison group.

24 MS. GUPTA: Your Honor, I believe it's
25 not a good comparison group, because, even though it's

1 possible that, for example, as my opposing counsel
2 pointed out, employees might work for more than an
3 hour for a long time at a place like Walmart, you do
4 not go to these stores to stand together in groups for
5 hours at a time. For example, people who work at cash
6 registers go to their separate stations, which are
7 spaced apart. People who are tasked with restocking
8 an aisle go in, complete that task, and then leave
9 that space.

10 So the intention of working in these
11 stores is not to stand together for long periods of
12 time. There are, of course, risks with working at a
13 grocery store or at a warehouse, just like there are
14 risks with conducting almost any other activity
15 currently, but E.O. 32 was tailored to those risks.
16 For example, it recognized that people stand in
17 manufacturing plants, but it asks manufacturing plants
18 to limit the amount of lines that they operate and
19 stagger shifts, among other things, so that people
20 would not be grouped together for long periods of
21 time. Same way grocery stores are supposed to have
22 one-way aisles so people aren't passing each other,
23 and employees are supposed to engage in social
24 distancing and wear masks when they cannot do so.

25 So E.O. 32 does recognize that there

1 are some risks at working at these stores, but simply
2 that the activity is different. And that's why Chief
3 Justice's reasoning is useful here, because the test
4 from McCoomey is to compare secular conduct that
5 endangers the Government's interest in the same way.
6 Here, meeting for a lecture in a school or for a
7 concert or a movie theater is more similar to the type
8 of activity that religious worship entails. It
9 involves --

10 JUDGE HAMILTON: Ms. Gupta?

11 MS. GUPTA: -- standing together in a
12 group.

13 JUDGE HAMILTON: Excuse me, Ms. Gupta.
14 This is Judge Hamilton. If -- if the -- if Order 32
15 was so -- so well-tailored, why does the -- why does
16 the worship restriction apply to same, a cap of 10
17 people, whether we're talking about a cathedral with
18 room for 1,000 or a storefront with room for 30?

19 MS. GUPTA: Your Honor, that limit was
20 consistent with guidance from the CDC at that time
21 about how big gatherings should be, and no matter how
22 big a cathedral might be, a gathering of 50 people is
23 necessarily more dangerous than 10 people. So because
24 at the time the virus was spreading so rapidly in
25 Illinois and the national guidance was to limit

1 gatherings, it seemed appropriate to limit gatherings
2 to ten people. Now that the situation has increased
3 in Illinois, this restriction has been limited, and
4 because of this, the governor's actions past the
5 deferential framework set out in Jacobson. This is
6 the type of case to which that framework would apply,
7 and it has two prongs.

8 The first is that the Government action
9 be rooted in a substantial public health interest,
10 which is, of course, present here, where the governor
11 was attempting to curb the spread of Covid-19, and the
12 second is that the Government's action does not go
13 beyond -- it does not, beyond all question, constitute
14 a possible invasion of constitutional rights. We
15 understand that is very important.

16 THE COURT: Counsel? Counsel, excuse
17 me. But could you address plaintiffs' point made a
18 few minutes ago about the, for example, social
19 services being provided by churches in the same
20 buildings, when you're feeding the homeless -- feeding
21 the hungry, housing the homeless, and so on?

22 MS. GUPTA: Yes, Your Honor. We think
23 that this exemption actually shows that the governor
24 was not discriminating against religions. There are
25 many organizations, whether secular or religious,

1 providing these types of charitable services as
2 central to their mission or their religion, but these
3 types of activities can be provided without extended
4 verbal interaction in close quarters. Someone can be
5 let in to stay somewhere in the church without that
6 person and the pastor being grouped together for long
7 periods of time.

8 The church can leave food out on tables
9 for people to take without standing together in rooms
10 for long periods of time. So the governor was trying
11 to allow whatever activity you could, given the
12 information we had about the virus at the time. And
13 so, he recognized that many religious organizations
14 find it essential to provide such services, and
15 recognizing that this activity was different than
16 standing together, for example, as a lecture at a
17 school allowed these organizations to continue to
18 conduct such activity in a safe manner.

19 So we don't think this exemption
20 actually shows religious animus, but rather shows that
21 the governor was cognizant of the type of activities
22 that religious organizations engage in, and he tried
23 to permit them when it was safe to do so. And so, I
24 think counsel's argument --

25 JUDGE HAMILTON: Counsel, this is Judge

1 Hamilton. Another question I want to put out for --
2 there for you to address. We know that -- I assume
3 that, in those palpable violations of the
4 Constitution, we would find, for example, an order
5 that decided to shut down one faith's worship services
6 and not another's or one party's rallies and not
7 another's. But I wonder how you think we should
8 apply, in the pandemic context, concerns about
9 discrimination and pretext, and you -- we see, for
10 example around the country the exercise of some
11 constitutional rights is more controversial than
12 others.

13 It's pretty hard to find animus against
14 religion in an elected leader in the United States,
15 but it's not hard to find people who are elected to
16 office and want to, for example, impose greater
17 restrictions on access to firearms or greater access
18 -- restrictions on access to abortions, for instance.

19 MS. GUPTA: Your Honor, --

20 JUDGE HAMILTON: So --

21 MS. GUPTA: -- I think there --

22 JUDGE HAMILTON: -- how do we go about
23 distinguishing between discriminatory or pretextual
24 (ph) features of some of these orders and -- and
25 legitimate deference?

1 MS. GUPTA: Your Honor, I think there
2 are a few ways to determine whether the Government's
3 actions are pretextual. The first is to look at what
4 the medical experts are recommending, and even the CDC
5 is recommending limiting in-person worship gatherings
6 and limiting gatherings in general.

7 Another way is to look at how the order
8 is treating other conduct. This is, of course,
9 similar to the Smith analysis, but I -- I think it is
10 helpful to look at the context in which the order is
11 issued. So if, for example, the governor was
12 prohibiting religious exercise but was allowing large
13 funerals to occur, as was the case in the North
14 Carolina case for Ian Dockets (ph), now that could
15 suggest it had some pretext, where the gatherings were
16 functionally similar, but one was being allowed but
17 not the other.

18 But here, we don't have any evidence of
19 pretext. If we look at the events leading up to the
20 issuance of E.O. 32, we were in the beginning months
21 of the pandemic, and what we did know is that it was
22 spreading quickly in gatherings, and it spread quickly
23 from people speaking and singing. So, given that
24 information at the time, there -- there was no
25 evidence that there was pretext. Rather, there was

1 evidence of the governor's orders was constant with
2 medical advice, including that from the CDC.

3 THE COURT: I have -- I have to follow-
4 up by asking about marches and demonstrations and how
5 those compare.

6 MS. GUPTA: Of course, Your Honor.
7 There are, of course, risks in marching or in
8 protesting in large groups, and those types of things
9 are occurring now, but at the same time, there aren't
10 any restrictions on religious gatherings. So the
11 governor has made a permissive policy choice, given
12 that the situation in Illinois has been steadily
13 increasing, to allow these activities that implement
14 First Amendment concerns, and especially because these
15 protests and marches are occurring outside, where the
16 virus doesn't transmit as easily.

17 He's also made the permissive policy
18 choice to ease restrictions on businesses right now,
19 because many Illinois residents and businesses have
20 suffered financial damage. So what he's trying to do
21 is -- is to balance the safety of Illinois residents,
22 but also recognize that people need to resume their
23 normal activity, and an important category of that
24 activity is First Amendment liberties, such as
25 religious exercise.

1 And we think there is no question that
2 this type of deference was due when E.O. 32 was
3 entered. We're not trying to suggest that, as long as
4 Covid-19 exists in the world, that there will continue
5 to be this need for a deference to every government
6 action. But simply, when you look at when E.O. 32 was
7 entered, the situation was so dire in Illinois and
8 people were dying so rapidly, that this type of
9 deference was needed, and we believe easily met.

10 But even if this Court to go to the
11 Smith --

12 THE COURT: Counsel, this is Judge
13 Feeney (ph). You talk about the -- what the record
14 shows. And how many deaths were there in churches, do
15 you know? Do you resolve --

16 MS. GUPTA: I --

17 THE COURT: Go ahead.

18 MS. GUPTA: I'm sorry. I personally do
19 not have the information o f how many deaths were due
20 to churches, but there were accounts that were going
21 on that these types of gatherings caused outbreaks of
22 the virus.

23 THE COURT: Well, these type of
24 gatherings doesn't exactly answer the question. The -
25 - and also, there is not universal -- you speak as if

1 there is a universal finding with regard to the
2 medical evidence in this thing. I don't think that's
3 the case, is it?

4 MS. GUPTA: Your Honor, it is correct
5 that there is a lot that we don't know about this
6 virus. You know, there's a lot of dispute about it,
7 but what is undisputed is that it travels primarily
8 through respiratory transmission. So when someone
9 speaks or sings, these droplets can be transmitted,
10 and what I meant about these types of gatherings is
11 that there are numerous accounts throughout the world
12 of religious gatherings leading to outbreaks, and we
13 have to keep in mind the context of when this order
14 was entered, at the end of April.

15 This wasn't a situation where everyone
16 had a lot of time to compile years of research and
17 figure out what was going on. We had to act in
18 accordance with the knowledge that we had at the time,
19 and that knowledge showed that in-person gatherings
20 that center around verbal interaction are dangerous,
21 and that's why schools have been closed. No one
22 doubts that going to school is very important, but
23 they have been closed for the past few months and have
24 only right now been opened for summer school on a
25 short-term basis. And other activities, such as going

1 to a movie theater or concert hall, which the Chief
2 Justice found comparable, are still prohibited. So
3 looking at the broader context, there is no evidence
4 of religious animus. Instead, there is an effort to
5 look at --

6 THE COURT: Counsel? Counsel?

7 MS. GUPTA: Yes, Your Honor?

8 THE COURT: You have two minutes
9 remaining.

10 MS. GUPTA: Thank you, Your Honor.

11 I would like to -- note that I address
12 any (indiscernible le).

13 THE COURT: I do have a question,
14 though. Would you be willing to agree and to say that
15 you will not enforce or go back to the original order
16 without coming to this Court to seek permission?

17 MS. GUPTA: Your Honor, we are not
18 willing to do this at this time, but I would like to
19 point out that neither the governor nor the state has
20 taken any enforcement measures against the church.
21 The enforcement measures via -- in plaintiff's
22 (indiscernible) have been from local governments,
23 which have (indiscernible) authority and can take
24 measures more strict than the governor does. So so
25 far, the governor has not taken any enforcement

1 actions against plaintiff or churches or any places of
2 worship.

3 But I -- I would like to point out
4 that, no matter what happens in the future, the
5 context is going to be important, because we have to
6 look at not only what restriction was placed on
7 churches, but also on other secular gatherings and how
8 they operate together. So we do understand, if this
9 Court thinks there is a wide case here, we still think
10 that there is no evidence of religious animus under
11 McCoomey or Smith, for the reasons that I outlined.
12 And we think that the South Bay (ph) case is still
13 useful here, because even though the standard is
14 different there, Chief Justice Roberts' opinion
15 emphasized the need for publicly-elected officials in
16 this context, and the governor has thus taken steps to
17 protect the people of Illinois, and they will continue
18 to rely on this publicly-elected official to protect
19 them from a virus that has already taken the lives of
20 more than 6,000 individuals.

21 So I know that I am almost out of time,
22 and unless the Court has any further questions, I ask
23 this Court to deny this request for preliminary
24 injunction.

25 THE COURT: Thank you, Counsel.

1 Mr. Mihet, anything further? You have
2 about four-and-a-half minutes.

3 MR. MIHET: Yes, I have several quick
4 hits here, Your Honor. Number one, when discussing
5 the difference between warehouses and churches, my
6 colleague on the other side said that the intention of
7 the people going to these places is different. With
8 due respect, the virus doesn't care what the intention
9 of the people is. What matters is the proximity of
10 the people, and there is no reason why people -- there
11 is no reason why people cannot be distanced in a
12 church, like they would be anywhere else.

13 Counsel mentioned that some of these
14 warehouses have different doors for egress and ingress
15 or one-way aisles going in and out or various measures
16 that they have taken. Well, the churches can, and
17 have, taken the same, exact measures, and so, there is
18 no reason why we would not even give the churches a
19 chance to -- to try to implement the same measure.
20 That's all the churches are asking for.

21 Now, with respect to the provision that
22 discriminates against the religious use of the church
23 property, you know, the Section 2.12(c) says
24 businesses and religious and secular non-profit
25 organizations, including food banks, when they are

1 providing food, shelter, social services, and other
2 necessities of life for needy people, are exempt from
3 the ten-person requirement. So counsel said that, you
4 know, these things can be done without close
5 interaction, but, you know, a church could literally
6 have 500 people in its auditorium feeding them a meal
7 or housing them overnight or teaching them how to
8 submit a jobless benefits applications and it would
9 not have any of those limits to contend with. But as
10 soon as the church starts preaching or praying or
11 worshipping with the same people in the same
12 auditorium, this provision kicks in. That is
13 unconscionable.

14 I would also say that the -- with
15 respect to the -- the protests and what not that are
16 happening, you know, everybody else other than
17 churches continues to remain subject to the ten-person
18 limit that was beforehand. Except that now, the
19 governor has decided to make exceptions for other
20 people. This shows the arbitrary nature of these
21 provisions, that he governor can just decide to impose
22 and give exemptions to whomever he wants without
23 anything to cabin (ph) his discretion.

24 I do want to spend a little bit of time
25 on enforcement. You know, every enforcement action

1 that was taken against these churches, from the
2 citations that they have received, the criminal
3 citations, right over to the letter that threatens to
4 actually bulldoze the churches, all of them have
5 referenced the governor's orders specifically saying
6 that the enforcement action is being taken because of
7 the the -- the governor's orders. And so, what I
8 would say then with respect to the movements issue,
9 the Federation Advertising case is different, because,
10 in that case, they were dealing with a legislative
11 enactment, not with a governor that was ruling by
12 fiat. And so, when a -- when a legislature enacts
13 something and then repeals it, it is entitled to more
14 deference than when one single person gets to make
15 these decisions willy -- willy-nilly, without any kind
16 of things to cabin their discretion.

17 I would say that it's very clear that
18 Jacobson does not stand for the proposition that there
19 is a pandemic exception to the Constitution, and I
20 would say that the Chief Justice in the California
21 opinion -- he was alone. Not even the -- the four
22 other justices in the majority joined that concurrent.

23 And I would end this presentation by
24 asking the Court to again, spend some time with the
25 first two pages of Order 38. This is the new, the

1 brand new order that was issued on May 29th. There
2 are so many dire predictions in these whereas clauses
3 about where the state is now. There is nothing in here
4 that would support the governor's claim that things,
5 all of a sudden, have gotten better, and they've
6 gotten better only for churches. And so, -- yes? I'm
7 sorry.

8 THE COURT: I think they weren't
9 asking.

10 MR. MIHET: Oh.

11 THE COURT: Go ahead.

12 MR. MIHET: And so, there is nothing in
13 this order that would suggest that -- that the
14 restriction on churches was removed because the
15 situation had gotten better for churches and only for
16 churches, and what this also shows is that --

17 THE COURT: Thank you, Counsel.

18 MR. MIHET: I'm sorry?

19 THE COURT: Thank -- thank you,
20 Counsel.

21 MR. MIHET: Oh, time is up? Okay, I'm
22 sorry. I didn't hear.

23 THE COURT: Thank you very much to both
24 sides. The case is taken under advisement, and the
25 Court will be in recess.

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MR. MIHET: Thank you.
(Proceedings concluded.)

* * * * *

C E R T I F I C A T I O N

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

/s/ Nicole Yawn

Nicole Yawn

Date: September 22, 2020

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