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**In the Supreme Court of the United States**

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REV. KEVIN ROBINSON AND RABBI YISRAEL A. KNOPFLER,

*Applicants,*

v.

PHILIP D. MURPHY, ET AL.,

*Respondents.*

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**APPENDIX FOR RESPONDENTS – VOLUME II OF IV, PAGES 231-399**

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## TABLE OF CONTENTS

	Page
Michelle L. Holshue, et al., <i>First Case of 2019 Novel Coronavirus in the United States</i> , N. ENGL. J. MED. 382:929–36 (Mar. 5, 2020) .....	R.A. 1
Natasha Khan, <i>New Virus Discovered by Chinese Scientists Investigating Pneumonia Outbreak</i> , WALL STREET J. (Jan. 8, 2020) .....	R.A. 17
Berkeley Lovelace, Jr. & William Feuer, <i>CDC Confirms First Human-to-Human Transmission of Coronavirus in US</i> , CNBC (Jan. 30, 2020) .....	R.A. 1
Centers for Disease Control and Prevention ("CDC"), <i>Coronavirus Disease 2019 – Frequently Asked Questions</i> , <a href="https://www.cdc.gov/coronavirus/2019-ncov/faq.html">https://www.cdc.gov/coronavirus/2019-ncov/faq.html</a> (last visited May 26, 2020) .....	R.A. 21
<i>Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak</i> , Proclamation No. 9994, 85 Fed. Reg. 15337-38 (2020) .....	R.A. 60
Prioritizing and Allocating Health and Medical Resources to Respond to the Spread of Covid-19, Exec. Order No. 13909, 85 Fed. Reg. 16227 (2020) .....	R.A. 64
CDC, <i>How to Protect Yourself &amp; Others, Coronavirus Disease 2019 (COVID-19)</i> , <a href="https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html">https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html</a> (last visited May 26, 2020) .....	R.A. 68

TABLE OF CONTENTS (cont'd)

Camilla Rothe, et al., *Transmission of 2019-nCoV Infection from an Asymptomatic Contact in Germany*, N. ENGL. J. MED. 382:970–71 (Mar. 5, 2020) .....R.A. 71

Lea Hamner, et al., CDC, *High SARS-CoV-2 Attack Rate Following Exposure at a Choir Practice—Skagit County, Washington, March 2020*, Morbidity and Mortality Weekly Report (MMWR), <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6919e6-H.pdf> (last visited May 26, 2020) .....R.A. 74

Allison James, et al., CDC, *High COVID-19 Attack Rate among Attendees at Events at a Church, Arkansas, March 2020*, MMWR, <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6920e2-H.pdf> (last visited May 26, 2020) .....R.A. 80

Isaac Ghinai, et al., CDC, *Community Transmission of SARS-CoV-2 at Two Family Gatherings, Chicago, Illinois, February-March 2020*, MMWR, <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6915e1-H.pdf> (last visited May 26, 2020) .....R.A. 85

Youjin Shin, et al., *How a South Korean Church Helped Fuel the Spread of Coronavirus*, WASH. POST (Mar. 25, 2020).....R.A. 91

Anna Kim, *Glenview Church Hit by COVID-19 Is Now Streaming Service Online, as Pastor Remembers Usher Who Died of Disease*, CHICAGO TRIB. (Mar. 31, 2020) .....R.A. 6

Chris Epp, *"I Would Do Anything for a Do-Over": Calgary Church Hopes Others Learn from Their Tragic COVID-19 Experience*, CTV NEWS (May 10, 2020) .....R.A. 111

## TABLE OF CONTENTS (cont'd)

Richard Read, <i>A Choir Decided to Go Ahead with Rehearsal. Now Dozens of Members Have COVID-19 and Two Are Dead</i> , L.A. TIMES (Mar. 29, 2020) .....	R.A. 117
Maggie Holmes, <i>Two People Die of COVID-19 as a Result of Church Gathering in KCK</i> , KCTV NEWS5 (Apr. 8, 2020) .....	R.A. 131
Bailey Loosmore & Mandy McLaren, <i>Kentucky County "Hit Really, Really Hard" by Church Revival that Spread Deadly COVID-19</i> , LOUISVILLE COURIER J. (Apr. 1, 2020) .....	R.A. 134
Mario Koran, <i>California Megachurch Linked to Spread of More than 70 Coronavirus Cases</i> , GUARDIAN (Apr. 3, 2020) .....	R.A. 137
Dakin Andone & Artemis Moshtaghian, <i>A Person Who Was Covid-19 Positive Attended a Church Service and Exposed 180 People, Officials Say</i> , CNN (May 17, 2020) .....	R.A. 142
Johns Hopkins Univ., <i>COVID-19 Dashboard</i> , <a href="https://coronavirus.jhu.edu/map.html">https://coronavirus.jhu.edu/map.html</a> (last visited May 27, 2020) .....	R.A. 147
CDC, <i>Coronavirus Disease 2019 – Cases in the U.S.</i> , <a href="https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html">https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html</a> (last visited May 27, 2020) .....	R.A. 149
N.J. Dep't of Health, <i>New Jersey COVID-19 Dashboard</i> , <a href="https://www.nj.gov/health/cd/topics/covid2019_dashboard.shtml">https://www.nj.gov/health/cd/topics/covid2019_dashboard.shtml</a> (last visited May 27, 2020) .....	R.A. 156



TABLE OF CONTENTS (cont'd)

Sheri Fink, *Worst-Case Estimates for U.S. Coronavirus Deaths*, N.Y. TIMES (Mar. 13, 2020).....R.A. 158

Ashley Balcerzak, *Nearly All Businesses in NJ Are Closed. Why Are Liquor Stores Considered "Essential"?*, MSN (Mar. 29, 2020) .....R.A. 169

Press Releases, New Jersey Attorney General, Enforcement of COVID-19 Restrictions (March 27, 2020; April 1, 2020; April 3, 2020; April 5-9, 2020; April 11, 2020; April 13, 2020; April 15-16, 2020; April 19, 2020; April 24, 2020; May 8, 2020; and May 22, 2020).....R.A. 174

Carlie Porterfield, *Church-Related Coronavirus Outbreaks Reported as Trump Pushes for Reopening*, FORBES (May 23, 2020).....R.A. 231

Zeeshan Aleem, *One German Church Service Resulted in More Than 100 Coronavirus Infections*, VOX (May 24, 2020) .....R.A. 235

Transcript of the Oral Decision of the Hon. Robert B. Kugler, U.S.D.J., *Dwelling Place Network v. Murphy*, Civil Action No. 20-6281 (June 15, 2020).....R.A. 240

CDC, *Coronavirus Disease 2019 – About Masks*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html> (last visited August 17, 2020) .....R.A. 329

Nathan W. Furukawa, et al., *Evidence Supporting Transmission of Severe Acute Respiratory Syndrome Coronavirus 2 While Presymptomatic or Asymptomatic*, EMERGING INFECTIOUS DISEASES 2020; 26(7) (July 2020), [https://wwwnc.cdc.gov/eid/article/26/7/20-1595\\_article](https://wwwnc.cdc.gov/eid/article/26/7/20-1595_article) .....R.A. 332

TABLE OF CONTENTS (cont'd)

Seungjae Lee, et al., *Clinical Course and Molecular Viral Shedding Among Asymptomatic and Symptomatic Patients with SARS-CoV-2 Infection in a Community Treatment Center in the Republic of Korea*, JAMA INTERNAL MEDICINE (Aug. 6, 2020), <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2769235> .....R.A. 339

Kate Conger, et al., *Churches Were Eager to Reopen. Now They Are Confronting Coronavirus Cases*, N.Y. TIMES (July 10, 2020) .....R.A. 346

Chacour Koop, *"It Spread Like Wildfire." How One Man at Church with COVID-19 Led to 91 Cases in Ohio*, KANSAS CITY STAR (Aug. 5, 2020) .....R.A. 353

Taylor Stuck, *Virus Outbreaks in Churches Continue*, THE HERALD-DISPATCH (Aug. 15, 2020) .....R.A. 356

Mike Valente, *Berea Church Suspends In-Person Services after COVID-19 Outbreak*, LEX 18 (Aug. 12, 2020).....R.A. 360

Payton Potter, *Pastor Addresses Coronavirus Outbreak Linked To Windham Church*, PATCH (Aug. 10, 2020).....R.A. 363

Jenna Rae, *COVID-19 Outbreak at Athens Church*, WAFF 48, (Aug. 10, 2020) .....R.A. 367

CDC, *Coronavirus Disease 2019 – Cases in the U.S.*, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last visited Aug. 17, 2020) .....R.A. 369

## TABLE OF CONTENTS (cont'd)

N.J. Dep't of Health, <i>New Jersey COVID-19 Dashboard</i> , <a href="https://www.nj.gov/health/cd/topics/covid2019_dashboard.shtml">https://www.nj.gov/health/cd/topics/covid2019_dashboard.shtml</a> (last visited Aug. 17, 2020) .....	R.A. 373
<i>Coronavirus in the U.S.: Latest Map and Case Count</i> , N.Y. TIMES, <a href="https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html">https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html</a> (last visited Aug. 17, 2020).....	R.A. 375
Madeline Holcombe & Dakin Andone, <i>Experts Say US Is Not Doing Enough To Contain Covid-19 As Nation Approaches 5 Million Cases</i> , CNN (Aug. 8, 2020).....	R.A. 389
CDC, <i>Coronavirus Disease 2019 – Deciding to Go Out</i> , <a href="https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/deciding-to-go-out.html">https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/deciding-to-go-out.html</a> (last visited Aug. 17, 2020) .....	R.A. 395
Peter Sullivan, <i>Evidence Mounts That Outside Is Safer When It Comes to COVID-19</i> , THE HILL (May 6, 2020) .....	R.A. 400
Tara Parker-Pope, <i>How Safe Are Outdoor Gatherings?</i> , N.Y. TIMES (July 5, 2020) .....	R.A. 404
<i>Are Outdoor Gatherings Safe? Here's What Experts Say</i> , ADVISORY BOARD, (July 17, 2020) .....	R.A. 409
Press Release, CDC, <i>CDC Calls On Americans to Wear Masks to Prevent COVID-19 Spread</i> , (July 14, 2020) .....	R.A. 414

## TABLE OF CONTENTS (cont'd)

Susanna Esposito, et al., <i>Universal Use of Face Masks For Success against COVID-19: Evidence and Implications for Prevention Policies</i> , EUROPEAN RESPIRATORY J. (Apr. 21, 2020) .....	R.A. 419
Xiaowen Wang, et al., <i>Association Between Universal Masking in a Health Care System and SARS-CoV-2 Positivity Among Health Care Workers</i> , J. OF THE AM. MED. ASS'N (July 14, 2020) .....	R.A. 429
M. Joshua Hendrix, et al., <i>Absence of Apparent Transmission of SARS-CoV-2 from Two Stylists after Exposure at a Hair Salon with a Universal Face Covering Policy—Springfield, Missouri, May 2020</i> , MMWR (July 17, 2020) .....	R.A. 432
Diana Kwon, <i>How Face Masks Can Help Prevent the Spread of COVID-19</i> , THE SCIENTIST (July 8, 2020) .....	R.A. 436
Trisha Greenhalgh, <i>Face Coverings for the Public: Laying Straw Men to Rest</i> , J. OF EVALUATION IN CLINICAL PRACTICE (May 6, 2020) .....	R.A. 442
Siddhartha Verma, et al., <i>Visualizing the Effectiveness of Face Masks in Obstructing Respiratory Jets</i> , PHYSICS OF FLUIDS 32, 061708 (June 30, 2020) .....	R.A. 451
Philip Anfinrud, et al., <i>Visualizing Speech-Generated Oral Fluid Droplets with Laser Light Scattering</i> , N. ENGL. J. OF MED. (Apr. 15, 2020) .....	R.A. 460
Abhiteja Konda, et al., <i>Aerosol Filtration Efficiency of Common Fabrics Used in Respiratory Cloth Masks</i> , ACS NANO (Apr. 24, 2020).....	R.A. 463

TABLE OF CONTENTS (cont'd)

Jeremy Howard, et al., *Face Masks Against COVID-19: An Evidence Review*, PROCEEDINGS OF THE NAT'L ACAD. OF SCI. OF THE UNITED STATES OF AMERICA (Apr. 10, 2020) .....R.A. 473

*New IHME COVID-19 Forecasts See Nearly 300,000 Deaths by December 1, However, Consistent Mask-Wearing Could Save about 70,000 Lives*, INST. FOR HEALTH METRICS AND EVALUATION (Aug. 6, 2020) .....R.A. 482

Andy Markowitz, *State-by-State Guide to Face Mask Requirements*, AARP, <https://www.aarp.org/health/healthy-living/info-2020/states-mask-mandates-coronavirus.html> (last visited Aug. 17, 2020).....R.A. 488

Wei Lyu & George L. Wehby, *Community Use of Face Masks And COVID-19: Evidence From A Natural Experiment Of State Mandates In The US*, HEALTH AFFAIRS (June 16, 2020).....R.A. 510

Christopher T. Leffler, et al., *Association of Country-Wide Coronavirus Mortality with Demographics, Testing, Lockdowns, and Public Wearing of Masks* (July 2, 2020).....R.A. 518

CDC, *Coronavirus Disease 2019 – How to Wear Masks*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-to-wear-cloth-face-coverings.html> (last visited Aug. 17, 2020) .....R.A. 603

German Lopez, *Just 6 States Meet These Basic Criteria to Reopen and Stay Safe*, VOX (July 22, 2020) .....R.A. 606

## TABLE OF CONTENTS (cont'd)

<i>Covid Act Now</i> , New Jersey, <a href="https://covidactnow.org/state/NJ?s=844163">https://covidactnow.org/state/NJ?s=844163</a> (last visited Aug. 17, 2020).....	R.A. 619
Johns Hopkins University & Medicine, <i>COVID-19 Dashboard</i> , <a href="https://coronavirus.jhu.edu/map.html">https://coronavirus.jhu.edu/map.html</a> (last visited Aug. 17, 2020).....	R.A. 628
CDC, <i>Coronavirus Disease 2019 – Considerations for Wearing Masks</i> , <a href="https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html">https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html</a> (last visited Aug. 17, 2020).....	R.A. 633
Holly Yan, <i>200,000 people have died from COVID-19 in the US. That's more than the US battle deaths from 5 wars combined</i> , CNN (Sept. 22, 2020).....	R.A. 639
Joel Achenbach and Rachel Weiner, <i>Experts project autumn surge in coronavirus case, with a peak after Election Day</i> , WASH. POST (Sept. 5, 2020).....	R.A. 644
<i>IMHE Model</i> , <a href="https://covid19.healthdata.org/united-states-of-america?view=total-deaths&amp;tab=trend">https://covid19.healthdata.org/united-states-of-america?view=total-deaths&amp;tab=trend</a> (last visited Sept. 22, 2020).....	R.A. 648
Mathieu Pollet, <i>Coronavirus second wave: Which countries in Europe are experiencing a fresh spike in COVID-19 cases?</i> , EURONEWS (Sept. 22, 2020).....	R.A. 654
Associated Press, <i>Eighth death linked to Millinocket wedding outbreak</i> , (Sept. 19, 2020) .....	R.A. 659

TABLE OF CONTENTS (cont'd)

Rachel Needham, *Anatomy of an Outbreak: Church Revival Blamed for Many of Rural County's COVID-19 Cases*, RAPPAHANNOCK NEWS (Aug. 29, 2020) .....R.A. 664

Aubrey Whelan & Ellie Silverman, *After Philly's First Church-linked COVID-19 Outbreak, Pastors Urge Prayers for Sick*, PHILA. INQUIRER (Aug. 21, 2020) .....R.A. 669

George Stockburger, *Chemung County Releases New Details in Lighthouse Baptist Church COVID-19 Cluster Death*, WETM 18 (Sept. 17, 2020) .....R.A. 672

*Covid Act Now*, New Jersey, <https://www.covidactnow.org/us/nj?s=1059230> (last visited Sept. 22, 2020) .....R.A. 675

CDC, *COVID Data Tracker*, [https://covid.cdc.gov/covid-data-tracker/?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#cases\\_deathsper100k](https://covid.cdc.gov/covid-data-tracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#cases_deathsper100k) (last visited Sept. 22, 2020) .....R.A. 684

CDC, *COVID Data Tracker*, [https://covid.cdc.gov/covid-datatracker/?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#cases\\_deathsinlast7days](https://covid.cdc.gov/covid-datatracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#cases_deathsinlast7days) (last visited Sept. 22, 2020) ...R.A. 688

CDC, *COVID Data Tracker*, [https://covid.cdc.gov/covid-data-tracker/?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#cases\\_casesper100k](https://covid.cdc.gov/covid-data-tracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#cases_casesper100k) (last visited Sept. 22, 2020) .....R.A. 691

TABLE OF CONTENTS (cont'd)

Orion Rummler, *CDC Director Suggests Face Masks Offer More COVID-19 Protection Than Vaccine Would*, AXIOS (Sept. 16, 2020) .....R.A. 700

Dr. Francis Collins, *Masks Save Lives*, NIH DIRECTOR'S BLOG (Aug. 25, 2020) .....R.A. 703

Colin J. Worby & Hsiao-Han Chang, *Face Mask Use in the General Population and Optimal Resource Allocation During COVID-19 Pandemic*, NATURE COMM'NS (Aug. 13, 2020).....R.A. 708

CDC, *Coronavirus Disease 2019 – Social Distancing*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html> (last visited Nov. 6, 2020).....R.A. 736

CDC, *How COVID-19 Spreads*, <https://tools.cdc.gov/api/v2/resources/media/407478/content.html> (last visited Nov. 6, 2020) .....R.A. 740

Nevada Declaration of Emergency Directive 022 (June 9, 2020).....R.A. 744

CDC, *Interim Guidance: Get Your Mass Gatherings or Large Community Events Ready for Coronavirus Disease 2019 (COVID-19)* (last visited Nov. 6, 2020) .....R.A. 750



TABLE OF CONTENTS (cont'd)

Lindy Washburn, *The Second Coronavirus Wave is here in NJ. Here's Why It's Different from Last Time*, NORTHJERSEY.COM (last updated Oct. 21, 2020), <http://www.northjersey.com/story/news/coronavirus/2020/10/19/covid-nj-cases-second-wave-hits-heres-why-its-different-time/3676551001/>.....R.A. 757

Brent Johnson, *N.J. Reports 2,472 new COVID-19 Cases, 9 More Deaths — 2nd Time in a Week with more Than 2,000 Cases*, NJ.COM (last updated Nov. 5, 2020).....R.A. 763

Matt Arco, *N.J. Reports 2,104 New COVID-19 Cases, 12 New Deaths as Second Wave Spike Escalates*, NJ.COM (last updated Nov. 5, 2020) .....R.A. 772

Brent Johnson, *N.J.'s Second Wave of COVID-19 Outbreak May Not Peak Until Early Next Year, Health Official Says*, NJ.COM (Nov. 3, 2020) .....R.A. 781

William Wan and Jacqueline Dupree, *U.S. Hits Highest Daily Number of Coronavirus Cases Since Pandemic Began*, WASH. POST. (Oct. 23, 2020) .....R.A. 786



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# Church-Related Coronavirus Outbreaks Reported As Trump Pushes For Reopening

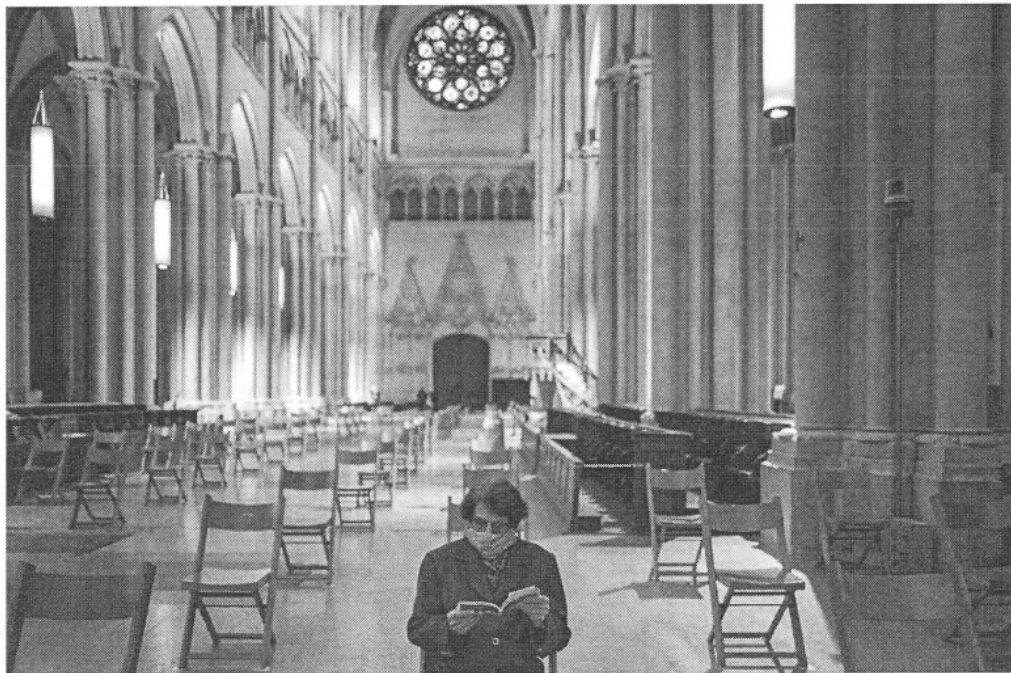


**Carlie Porterfield** Forbes Staff

Business

*I cover breaking news.*

**TOPLINE** As President Donald Trump sides with churches that want to reopen faster than their state's safety guidelines will allow, new Covid-19 virus outbreaks associated with in-person religious services are being reported worldwide.



Churches across the world have been linked to Covid-19 clusters. AFP VIA GETTY IMAGES

#### KEY FACTS

- Trump demanded Friday that states allow places of worship to reopen and even threatened to order them open himself if governors won't, though he doesn't have the authority under federal law.
- However, in-person religious services have been linked to a number of new Covid-19 outbreaks in recent weeks around the world, including cases that proved fatal.
- More than 40 people who attended a church service in Frankfurt, Germany several weeks ago have since tested positive for Covid-19, local officials said Saturday.
- A church in rural Arkansas has been connected to a Covid-19 cluster by the Centers For Disease Control, who reported this week that 35 people, or nearly 40% of attendees over about a week in early March, tested positive for Covid-19, with three dying from the virus.
- A church in Texas closed for the second time last week when a priest died from the virus less than two weeks after masses resumed as the state eased back its Covid-19 crackdown.
- A Virginia pastor who held church services throughout March against the advice of health officials—and told congregants he would continue “unless I’m in jail or the hospital”—died from Covid-19 in April.

#### KEY BACKGROUND

Churches are the latest battleground for the push and pull between proponents of continuing social distancing to curb Covid-19 and

those in support of reopening society. Trump said reopening churches would help “normalize” life in the U.S. on Thursday, adding that “the churches are not being treated with respect by a lot of the Democrat governors.” Florida megachurch leader Rodney Howard-Browne was arrested in March for continuing to hold church services in violation of a countywide order.

#### FURTHER READING

More than 40 diagnosed with COVID-19 after Frankfurt church service (Reuters)

Trump Demands States Reopen Houses Of Worship, Claims Will Override Governors If They Don’t (*Forbes*)

1,200 California Pastors Plan To Defy Stay-At-Home Orders To Hold Services (*Forbes*)

CDC Finds Coronavirus Outbreak Linked To Arkansas Church Amid Ongoing Concerns Over Religious Gatherings (*Forbes*)

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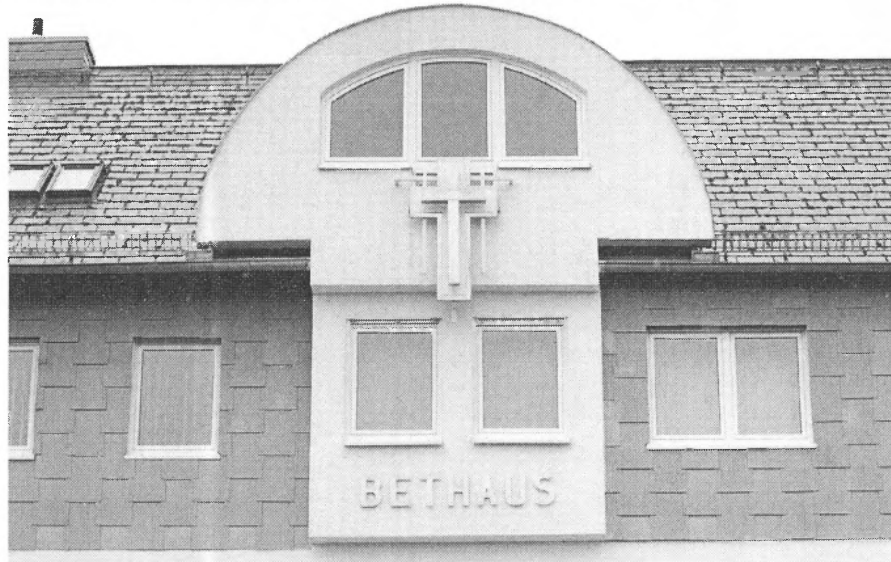




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A church in Frankfurt, Germany, was forced to close after 40 cases were traced to a service there. | Boris Roessler/picture alliance/Getty images

A single church service in Frankfurt, Germany, held in early May appears to have led to at least 107 reported cases of coronavirus in the area, according to a report from the **Wall Street Journal**.

The outbreak highlights the risks that accompany easing lockdowns even in countries that have managed to **control the spread of the virus** relatively well. And it also serves as a reminder of the acute threat posed by **“superspreader” events** involving crowds, a pressing concern in the US as President Donald Trump **encourages churches nationwide to reopen** their doors to worshippers.

“This situation shows how important it is — especially during loosening of restrictions, which is now possible again — that we remain vigilant and do not become careless,” Kai Klose, health minister for Hesse (the state Frankfurt is in) said. “The virus is still there and wants to spread.”

The striking feature of the event is how many people appear to have contracted the coronavirus at the same time — and all while the church worked to promote social distancing and hygiene.

The Baptist church had suspended services in March in accordance with government lockdown orders, but it resumed them after Germany loosened restrictions on May 1. The church **reportedly** followed government guidelines for services, which included reductions on the total number of people allowed in the church and a requirement of 1.5 meters (about five feet) between congregants.

But a service held on May 10 has resulted in more than 100 infections, and appears to be the **source of at least 16 cases** in the town of Hanau, 15 miles east of Frankfurt. The town has subsequently called off other religious gatherings in the area due to the risk of further spread.

## **The Frankfurt case is a reminder of the risks of crowds in enclosed spaces**

The community spread in Frankfurt is notable because it shows how easily increases in Covid-19 cases can occur even in countries with relatively manageable overall case numbers. Germany **flattened the curve of new infections fairly quickly** and has a low fatality rate compared to its neighbors in Europe. But since



relaxing its lockdown in May, the number of cases **has risen**, raising questions of how to strike the right balance between public safety and social and economic needs to keep the country running.

Experts have long warned that events involving crowds, like concerts, sporting events and gatherings for religious services, are high-risk environments for spread of the virus. But in spite of that, in the US, President Trump **has insisted** churches should be reopened as quickly as possible.

At a press conference Friday, Trump said governors need to reopen churches “right now,” and that if they decline to do so, he will “override the governors.” As Vox’s Ian Millhiser has explained, **he can’t really do that** — but the Frankfurt case illustrates why reopening houses of worship is a matter of concern.

Worshippers in Frankfurt were maintaining social distancing, but as **Vox’s Brian Resnick** has explained, that may not always be enough when a lot of respiratory droplets are being expelled in a contained space:

The main way people are getting sick with SARS-CoV-2 is from **respiratory droplets** spreading between people in close quarters. The risk of catching the coronavirus, simply put, “is breathing in everybody’s breath,” says Charles Haas, an environmental engineer at Drexel University. Droplets fly from people’s mouths and noses when they breathe, talk, or sneeze. Other people can breathe them in. That’s the main risk, and that’s why face masks are an essential precaution (they help stop the droplets from spewing far from a person’s mouth or nose).

...

A crowded indoor place, then, with poor ventilation, filled with people talking, shouting, or singing for hours on end will be the riskiest scenario. A sparsely populated indoor space with open windows is less risky (but not completely safe). Running quickly past another jogger outside is on the other end of the spectrum; minimal risk.

Given these risks, there is concern the US could see incidences of infection similar to the Frankfurt case should churches reopen — particularly if there is poor social distancing. And given both Trump’s advocacy for the issue and that houses of

worship have been allowed to **open in some states**, that concern is not abstract. Which means finding ways to reduce the risk of infection in places like the Frankfurt church will be important not just for Germany, but for the US and other countries as well.

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**UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW JERSEY**

**DWELLING PLACE NETWORK, ET  
AL,**

**CIVIL ACTION NUMBER:**

**20-6281**

**Plaintiffs,**

**TEMPORARY RESTRAINING ORDER**

**v.**

**PHILIP D. MURPHY, ET AL,**

**Defendants.**

Mitchell H. Cohen Building & U.S. Courthouse  
4th & Cooper Streets  
Camden, New Jersey 08101  
June 15, 2020

**B E F O R E:**

**THE HONORABLE ROBERT B. KUGLER,  
UNITED STATES DISTRICT JUDGE**

**A P P E A R A N C E S:**

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FOR PLAINTIFFS

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Proceedings recorded by mechanical stenography; transcript  
produced by computer-aided transcription.

1 (The following took place by way of Zoom.)

2 (Open Court)

3 THE COURT: Good morning, everybody. Can you hear  
4 me?

00:17 5 MR. COLEMAN: Yes, your Honor.

6 MR. FEIGENBAUM: Yes.

7 THE COURT: Are we waiting for any other lawyers?

8 MR. VANNELLA: Not on our side.

9 MR. FEIGENBAUM: Not for the State either.

00:17 10 THE COURT: I'm waiting for my Deputy Clerk. I see  
11 Carl's here, our court reporter. He's raring to go.

12 (Brief pause.)

13 THE COURT: All right. Okay. Well, everybody want  
14 to get started? Are we ready to go?

00:18 15 MR. COLEMAN: Yes.

16 MR. VANNELLA: Yes, your Honor.

17 THE COURT: All right. Let's start with appearances  
18 of counsel. We'll start with the plaintiffs, please.

00:18 19 MR. COLEMAN: For the plaintiffs, Ronald Coleman,  
20 Mandelbaum Salsburg in Roseland.

21 THE COURT: For the defendants.

22 MR. VANNELLA: Good morning, your Honor. Daniel  
23 Vannella from the New Jersey Office of the Attorney General on  
24 behalf of the defendants.

00:18 25 MR. FEIGENBAUM: And Jeremy Feigenbaum, also from the

1 Office of the Attorney General, on behalf of the defendants.

2 THE COURT: All right. Let me start with some  
3 preliminary instructions in this matter.

4 We're going to handle this the same as we would in the  
00:18 5 courtroom. So please speak clearly and distinctly and slowly.  
6 The technology, the Zoom technology is okay but it's not great  
7 we've found in the experience of this. It's wonderful to have  
8 social conversations, but it's a little difficult when we're  
9 trying to establish a record. Obviously, we can't talk over  
00:19 10 each other. I'm going to call upon each side and give you an  
11 opportunity to have some questions, and then you'll have an  
12 opportunity to speak.

13 Mr. Nami is on board, and he is not shy about stopping  
14 people if he can't hear you or understand you, and I encourage  
00:19 15 him to do that, so you may hear him interrupt and that's fine.  
16 We'll just have to stop and figure out what we need.

17 Before we get into the merits of this, I want to thank  
18 both sides. The briefing was terrific.

19 MR. COLEMAN: Thank you.

00:19 20 THE COURT: You really laid out the issues and the  
21 facts and it was well-written. And this is a very interesting  
22 case. I'm going to refer collectively to the defendants as  
23 the State, and we'll probably refer collectively at times to  
24 the plaintiffs as the churches.

00:20 25 All right. I want to start with the State, because

00:20 1 some things have been happening, particularly since the  
2 plaintiffs brought this application. We're now operating I  
3 think under Executive Order 152 with a 25 percent indoor but  
4 not more than 50 people unlimited outdoor, et cetera, et  
5 cetera. Face coverings. Things of that nature. And we'll  
6 talk some more about that. But are there any current plans to  
7 further revise these regulations under the executive order as  
8 they apply to religious services?

00:21 9 MR. FEIGENBAUM: Thank you, your Honor.

00:21 10 The Governor has not stated any specific date or any  
11 specific number where we anticipate a change. But what he had  
12 said and what's been true for the gathering limits all along  
13 is that the idea here is we will announce a new number, like  
14 we just did in Executive Order 152, we will evaluate the data,  
00:21 15 we will see how that affects our reopening, whether it looks  
16 like other states or if our decline continues, and then we'll  
17 keep evaluating.

00:21 18 So, I can't give a specific date or a specific number  
19 for indoor gatherings for religious organizations, but I can  
00:21 20 say, and all that I'm authorized to represent for the State,  
21 that the reopening plan is continuing and will review  
22 continued data of the gatherings limit.

00:22 23 THE COURT: But there's no specific plans, like last  
24 time I was informed by the State that you thought changes were  
00:22 25 coming. We're not in that position now; is that correct?

1 MR. FEIGENBAUM: That's correct, your Honor.

2 THE COURT: Okay. I want to get some update from the  
3 plaintiffs on what the churches are doing. Because when I  
4 reviewed the certifications once again, a lot of things that  
5 they were asking for, it seemed to me they were able, going to  
6 be able to do this past weekend. So let's find out how this  
7 all turned out. The weather was beautiful here in New Jersey  
8 on Sunday.

00:22

9 MR. COLEMAN: Yes, it was.

00:22

10 THE COURT: Well, we'll just start with Dwelling  
11 Place Network, Bobby Bledsoe.

12 MR. COLEMAN: Well, your Honor, actually that's the  
13 best one to ask about, because Dwelling Place Network has a  
14 1,000 seat sanctuary. With rather conservative social  
15 distancing, it could accommodate 200 to 250 people if not for  
16 the limits that are in place now.

00:22

17 So, the answer to the question what they're doing now  
18 is that all of my clients are complying with the State's  
19 regulations, meaning that they're either having outdoor  
20 services or capped numbers of services, meaning, therefore,  
21 that they're having -- they're accommodating fewer people than  
22 they otherwise would, or they're accommodating them outdoors  
23 under strict social distancing rules. That's my  
24 understanding.

00:23

25 THE COURT: Well, for Pastor Bledsoe at Dwelling

00:23



1 Place Network in Newark, he says in his certification,  
2 Paragraph 4, that he has a capacity of 180 worshippers --

3 MR. COLEMAN: Oh, I'm sorry, I'm referring to the  
4 wrong one then. So --

00:23 5 THE COURT: Regularly about 140 would come on  
6 Sundays.

7 MR. COLEMAN: Right. The one --

8 THE COURT: He says they, you know, it includes  
9 communion, hands-on healing, baptisms.

00:24 10 What was -- do you know what Pastor Bledsoe was able to  
11 do this past Sunday in regards to religious services?

12 MR. COLEMAN: No, your Honor, we -- considering that  
13 we did not expect that there would be any opportunity for  
14 supplementing the record. I can represent, though, that  
00:24 15 having been in contact with my clients in the time since we  
16 last spoke, that what they've been -- again, what they've been  
17 doing has been either, has been in compliance with the  
18 Governor's orders, that I have every reason to believe that  
19 they're taking full advantage of it, except to the extent that  
00:24 20 they're capped on an absolute basis in terms of -- Dwelling  
21 Place actually, your Honor, to be clear, is not in Newark.

22 THE COURT: It's in Vineland.

23 MR. COLEMAN: Right. Right. So, their plans to --  
24 the Dwelling Place sanctuary holds, would have room for,  
00:25 25 normally for 140, and I have every reason to believe that they

1 are, instead of having 50 percent capacity they're having, you  
2 know, whatever is -- whether they chose to go outside and have  
3 a larger service or chose to go inside and use the smaller cap  
4 number, your Honor, I'm not aware.

00:25

5 THE COURT: Well, it kind of makes a difference as to  
6 what it is you're asking me to do.

7 Well, let's go on to the next one, which is Pastor  
8 Ralph Graves in the House of Cornerstone Community Church. He  
9 says, and this is a bigger place.

00:25

10 MR. COLEMAN: Right.

11 THE COURT: But he's suggesting in Paragraph 5 that  
12 they could go to a third service. But if you look at the  
13 numbers in Paragraph 4, they could go to four services inside  
14 on Sundays or whatever day it is that they celebrate, I'm  
15 assuming it's Sunday.

00:26

16 MR. COLEMAN: Yes, your Honor.

17 THE COURT: And meet the numerical limits easily.

18 MR. COLEMAN: Yes. My understanding is that they're  
19 doing so. I have every reason to believe that they're taking  
20 full advantage of the relaxation of the rules that have taken  
21 place since we last appeared.

00:26

22 THE COURT: He also says in Paragraph 7 that they'd  
23 be willing to hold outdoor services.

24 MR. COLEMAN: Yes. They were.

00:26

25 THE COURT: So, they're able to comply then with

1 these guidelines, correct?

2 MR. COLEMAN: Well, your Honor, they are. That  
3 doesn't necessarily -- in other words, when this application  
4 was made, they -- which was obviously on May 26th, they  
00:26 5 were -- all my clients were prepared to comply with the  
6 guidelines that existed, A, at the time. And B, they were  
7 seeking at least a level of relaxation, almost, that was  
8 available, that was available then. We're not necessarily  
9 saying that there are -- that under the present circumstance  
00:27 10 that they would accept those limitations now, because it's two  
11 weeks later and a lot of things have changed.

12 THE COURT: Well, I understand that, but I'm just  
13 going by what they proposed in the papers.

14 MR. COLEMAN: Yes. Understood.

00:27 15 THE COURT: And it seems to me that under the new  
16 guidelines that they are able to comply with the new  
17 guidelines. So if it's something else they want, and think  
18 that the First Amendment Free Exercise Clause entitles them  
19 to, it's not before me at this time. It's difficult for me to  
00:27 20 make a decision on that.

21 MR. COLEMAN: Well, your Honor, with all due respect,  
22 we would suggest that the fact that our clients were prepared  
23 in the end of -- in late May to be handcuffed to a certain  
24 extent, at least to open up a window of greater opportunity to  
00:28 25 serve their congregations than is the case now, doesn't

00:28 1 necessarily mean that -- and, you know, if we certainly, if  
2 the Court had wanted us to -- you know, we didn't want to be  
3 presumptuous, and given that there was no, there was no  
4 opportunity for a reply, notwithstanding the calendar, we  
5 thought it would not be appropriate to supplement the record  
6 with additional information.

00:28 7 We do think that our clients' arguments regarding the  
8 restrictions are still valid, including the fact that they --  
9 that we have to come into a Federal Court in order to have the  
10 discussion about how many people can attend church services as  
11 opposed to how many people can attend Home Depot. Our  
12 *prima facie* argument, your Honor, is that those distinctions  
13 are discriminatory toward religion and that the record of  
14 the -- presented by the State does not satisfy the criteria  
00:29 15 for making that distinction.

00:29 16 So, yes, it's true that what our clients planned in  
17 late May and were hoping to achieve in late May, at least  
18 those with the smaller sanctuaries, is now possible to do.  
19 And it's a good thing that we had great weather this weekend,  
20 not so good for my lawn, we appreciated the rain more, but we  
21 don't know, the Governor has stated in response to your  
22 Honor's question that we don't know when the next relaxation  
23 of the rules will be. And we don't know what effect that  
24 might otherwise have on our clients' circumstances.

00:29 25 So, having made -- the Court's point is obviously

1 understood, but we do wish to make it clear that we don't  
2 think that there's any reason that the May 26th state of  
3 affairs where we were requesting much more minimal relief than  
4 I think it would be appropriate under the circumstances and on  
5 the record now, should necessarily govern.

00:30

6 THE COURT: But the difficulty that the Court is in  
7 is that I have before me these applications, essentially  
8 applications from the pastor saying, we can survive with A, B  
9 and C, and now the State has provided A, B and C, so I'm not  
10 sure what it is that's before the Court that I can order at  
11 this point.

00:30

12 MR. COLEMAN: Well, we can consider the certification  
13 of Pastor Myers then.

14 THE COURT: Right.

00:30

15 MR. COLEMAN: Which is the New Life Church in  
16 Millville. And he's the one that I had in mind when I spoke  
17 in the beginning who has a sanctuary that can seat a thousand  
18 people. Normal Sunday church attendance is 225 to 300 people.  
19 And that right now is beyond the absolute cap for, for indoor  
20 gatherings.

00:31

21 THE COURT: Well, he'd have to have six services on  
22 Sunday to do it indoors. But he also hints about outdoors,  
23 because at the time the outdoor cap was 25, at the time that  
24 he wrote this. But now there is no cap. I'd be interested to  
25 know if he's able to conduct his services outdoors, because as

00:31

1 the State points out, he can put up a tent, he can put up  
2 roofs, he can put up tarps and everything else outdoors to  
3 protect parishioners and church employees and the pastor from  
4 the sun and the elements.

00:31 5 MR. COLEMAN: Your Honor, there's a lot of things you  
6 could do, but what we've seen over the last week is that the  
7 State doesn't actually consider them necessary to do except  
8 with respect to those activities that it wishes to, to -- to  
9 restrict. So, for example, if there is a public march that  
00:32 10 the Governor wants to attend, there is no outdoor limit.

11 There's no social distancing, there are no tents. And when  
12 the Governor is asked to explain the distinction, his  
13 explanation is that, well, this is a big moment, this is one  
14 of the big -- this is of historic importance.

00:32 15 And, your Honor, we would submit that the First  
16 Amendment has been of historic importance for a couple hundred  
17 years. The fact that one kind of activity is subject to no  
18 restrictions -- we saw the Governor marching literally  
19 shoulder to shoulder, not going into a grocery store and  
00:32 20 quickly buying food. Rather, participating in a demonstration  
21 with essentially no restrictions other than wearing a mask.  
22 It was outdoors, but the fact is the record on outdoors versus  
23 indoors is inconclusive.

24 And, your Honor, I mean, what the State submitted here  
00:33 25 was a couple of studies from 1998 and 1968 concerning

00:33 1 tuberculosis. Interestingly, despite the fact that  
2 tuberculosis and COVID are not the same disease, most of these  
3 studies involve church choirs. Yet, we see that church choirs  
4 are allowed to meet, even though tuberculosis is still  
5 something that exists. We see that churches are allowed to,  
6 to, to have regular services in their facilities that they  
7 spent a great deal of trouble and, and, and gold building; in  
8 other words, money. Going to the trouble of building these.  
9 The suggestion that they should -- that it's good  
00:34 10 enough for them to go outside because our, what has become  
11 essentially a one-man government has decided that that's  
12 sufficient, your Honor, we think at this stage is entirely  
13 appropriate to say that that is before the Court. That there  
14 is no distinction based on the State's -- on the conduct of at  
00:34 15 least one of the defendants that is the defendant who's  
16 calling all the shots here. There's no longer a rational  
17 basis for distinguishing between the number of people at a  
18 service, there's no real record evidence -- in other words,  
19 yes, the State has incrementally added an additional level of  
00:34 20 permit for religious services so that a smaller congregation  
21 is able to fit within the present regulation, but what we  
22 don't see is any limit to those regulations, any rationale or  
23 any criteria by which this state returns to democracy -- we've  
24 had a state of emergency now for three months. What the State  
00:35 25 has failed to demonstrate is that there's any reason our

1 legislature and the Health Department and the rule-making  
2 procedures that have managed disease and health and public  
3 interest and the First Amendment in this state for 250 years  
4 are not adequate to the task.

00:35

5 This is a, this is a facial challenge, your Honor, not  
6 only an as-applied challenge. The fact that of the four  
7 pastors of the small congregations, of the relatively small  
8 congregations that submitted certifications two, three weeks  
9 ago, are now able to fit inside the permission given by the

00:36

10 State to meet in their churches or outside their churches. Do  
11 we have to come back every week to Federal Court and find out  
12 when the permission is going to be granted for them to be  
13 indoors? We're beyond the point where emergency regulations  
14 can be justified, especially given the First Amendment --

00:36

15 we're not here to say we have a better way of governing. But  
16 we do have a better way of governing, it's by democracy.

00:36

17 Why the legislature has been silent here, well, that  
18 question is not in front of your Honor. But the idea that the  
19 Governor may indefinitely continue an incremental regulatory  
20 process deciding whether people can attend churches indoors or  
21 outdoors, the cases are very clear that government may not  
22 *prima facie* say, we've decided that your First Amendment  
23 rights are sufficiently met with respect to worship in a  
24 smaller space or in an outdoor space. All things being equal,  
25 congregations are entitled to pray where they want to and in

00:37



1 the manner they want to.

2 We believe that to the extent that the State has  
3 demonstrated that it is entitled to interfere with that  
4 decision, that time passed in March and the Governor's conduct  
00:37 5 over the last week has demonstrated nothing more than that at  
6 this point the regulations have nothing to do with public  
7 safety. When asked about why he was attending a public  
8 demonstration in which he marched for a considerably -- we  
9 didn't take a stopwatch to it, your Honor, but it was longer  
00:37 10 than it takes to go into a grocery store and buy milk and  
11 orange juice. And the Governor's response was, well -- as you  
12 can see from some of these photos, sometimes it's hard, I  
13 think folks should get tested. If they've been in a big  
14 gathering like that in real proximity to others, I think  
00:38 15 getting tested is a smart move.

16 Your Honor, we ask the Court to require that the State  
17 apply the same standard to people who wish to exercise their  
18 First Amendment rights the way Governor Murphy exercised his  
19 First Amendment rights, which is to -- if they want to go as  
00:38 20 Americans to a large gathering, they take care, they make an  
21 adult decision, they get tested, maybe they get tested  
22 beforehand. But to make a blanket rule that stores, that  
23 beaches, that demonstrations may be open and unlimited but  
24 houses of worship, which like demonstrations are entitled to a  
00:39 25 presumption of non-interference, that those should be limited

1 and that the State -- unlike the last time we appeared, and  
2 where the State at least was promising that additional relief  
3 would be available here, the State's not even doing that.

4 So, your Honor, we submit that the as-applied challenge  
00:39 5 there is indeed still before the Court, and that the State's  
6 conduct and in particular the conduct of the defendant,  
7 Governor Murphy, demonstrates that at this point the, the  
8 restrictions in place are pretextual. What the pretext is  
9 for, I don't frankly know. But the idea that if a politician  
00:39 10 or an elected official believes that an issue is sufficiently  
11 important that social distancing rules do not need to be  
12 applied and that testing is good enough, that's the standard  
13 that should be applied to religious worship as well.

14 THE COURT: Well, you raise some very interesting  
00:40 15 policy issues. The Governor's going to have to answer to  
16 those through the electoral process. I mean, I think the  
17 Chief Justice would respond that if you don't like the  
18 policies, the next election throw the bums out and put in a  
19 new group of bums. That's the way it's supposed to work.

00:40 20 MR. COLEMAN: Well, your Honor --

21 THE COURT: You raised the issue of the silence of  
22 the legislature in New Jersey, and you're right. I've seen  
23 some statements from Senator Sweeney about that, but that  
24 speaks volumes too, that's our most democratic branch in New  
00:40 25 Jersey, the legislature, and they've seen fit not to do

1 anything at all about restraining the Governor's ability that  
2 they gave him, you know, years and years and years ago.

3 But anyway, I want to get back to the last church,  
4 which is the House of Praise Church. It seems to me with the  
5 small numbers involved in that church that they can easily  
6 have now held whatever services they want.

00:41

7 MR. COLEMAN: Agreed, your Honor.

8 THE COURT: In their church. So they really don't  
9 have anything to complain about anymore.

00:41

10 But anyway, so what you're telling me now is that you  
11 want me to, what, strike down in its entirety any limitation  
12 on religious services at these churches and others?

13 MR. COLEMAN: Well, your Honor, we believe the Court  
14 has the power to do that. That the record in front of it is  
15 sufficient to do that. We -- and, yes, we do ask that the  
16 Court do that. We believe, again, that the Governor's conduct  
17 and comments starting with the Bill of Rights is above my pay  
18 grade, and ending with his explanation as to his conduct last  
19 week in which he said this may be one of the most profound  
20 moments in the history of our country, this is the moment that  
21 I think is bigger than any of us right now.

00:41

00:42

22 Your Honor, we think that the Constitution and the  
23 First Amendment is bigger than any of us right now. And that  
24 notwithstanding the fact that a political majority in the  
25 legislature may see fit not to embarrass a governor of the

00:42

1 same party and is comfortable acquiescing in the surrender of  
2 its power, it hasn't -- neither the legislature nor the  
3 Governor has the power to override the First Amendment. And  
4 we're not here on a challenge to the legislative process, but  
00:42 5 we are here on a challenge under the First Amendment.

6 So, yes, that is what we're asking for. We think that  
7 short of that, there are many forms of relief, including at  
8 the very least removing an absolute cap that has, that is  
9 unrelated to capacity. We think, your Honor, that there's --  
00:43 10 the State has not made any argument whatsoever to justify  
11 that. But we also think, again, in light of the  
12 demonstrations, you know, it's clear that there's no real, no  
13 real sense among the defendants that it's necessary for people  
14 to be prohibited from gathering in the way that they see fit  
00:43 15 as adults the way we do all the time.

16 THE COURT: Well, there are many, many people that  
17 I'm sure that share your clients' frustrations and their fears  
18 that this is diminishing the value of the First Amendment to  
19 the Constitution, which we have been enforcing for over  
00:43 20 200 years. Really, the question before me, the question is  
21 whether or not the First Amendment gives your clients the  
22 right to completely open up without any restrictions  
23 whatsoever.

24 MR. COLEMAN: So we submit at this point, your Honor,  
00:44 25 that at this point, meaning under the facts before the Court

1 now, that it does.

2 THE COURT: The State raises an interesting point I'd  
3 like you to address, and that is that these executive orders  
4 began back in March. And you have the ability, your clients  
5 have the ability under State law to challenge those executive  
6 orders, and had the ability to challenge those executive  
7 orders in the Appellate Division as soon as they were entered.  
8 But your clients chose not to do that, they chose this route.  
9 And it's caused, you know, three months of delay in getting to  
10 this point of having a judge independent of the State  
11 judiciary, which seems to be something of interest in  
12 plaintiffs in these cases, and pass on whether or not these  
13 executive orders are legal. Why didn't your clients challenge  
14 the executive order earlier on? Why did they wait till now?

15 MR. COLEMAN: Because earlier on, your Honor, there  
16 was a consensus, your Honor, on a number of things. One of  
17 them was that there was, that the large extent of uncertainty  
18 regarding the facts was sufficient for everyone affected,  
19 which was everyone in the state, not to act, that it would be  
20 better to be cautious and that there was every reason in the  
21 world to assume -- which, by the way, we still do, that the  
22 State of New Jersey and its agencies have the welfare and  
23 health of its citizens first and foremost in its  
24 considerations.

25 What happened, however, was that as time went on and

1 facts changed on the ground with respect to first the  
2 rationale for the restrictions, which the original rationale,  
3 as your Honor knows, was to avoid overwhelming health care,  
4 not to prevent anyone from getting sick for the rest of time,  
00:46 5 or even to prevent anyone from getting COVID, but rather to  
6 avoid overwhelming what were, seemed to be potentially limited  
7 health care facilities in the event of a very extreme spike.  
8 That rationale went by the board. But the policy of  
9 quarantining did not go by the board.

00:46 10 And as the months went on and my clients, and I had  
11 this discussion with them, saw that they were increasingly  
12 unable to serve their parishes, that what they had anticipated  
13 would be a four to six-week period, perhaps, during which they  
14 would be limited from providing the services that they do  
00:47 15 which include not only worship services but a wide range of  
16 human services, social services, then they realized that it  
17 was -- what they thought would be a reasonable response from  
18 the State to change in circumstances which with respect to  
19 the, again, the rationale for the quarantine and for the  
00:47 20 lockdown, and to the very considerable reduction in infection  
21 rates as well as different and changing understandings of how  
22 the sickness is spread and whom it affects, what cohorts make  
23 up the vast majority of the infected. As these facts became  
24 clear, our clients came to understand that the State's -- the  
00:48 25 State was not exhibiting what should have been the appropriate

00:48 1 level of flexibility to react to the new information and allow  
2 their First Amendment activities to continue. By then, the  
3 opportunity to go to this legislative, you know -- through  
4 the, you know, the long way had really been foreclosed, you  
5 know.

00:48 6 So, by mid-May when it was clear that there was no  
7 longer a health care crisis in terms of admissions and it was  
8 clear that over 80 percent of the deaths in New Jersey took  
9 place among those 65 or over, of whom a great number were  
10 nursing home residents, as these facts became clear and it  
11 became more and more apparent that meeting in congregate  
12 worship was not nearly the risk that it was thought to be in  
13 March or April when these orders were first made, the

00:49 14 combination of the State's lack of flexibility in reacting to  
15 the changing circumstances, as well as the sort of political  
16 doubling down -- I mean there are many, many comments during  
17 the course of this adventure that we've been on over the last  
18 three or four months, during which the State has made it very,  
19 very clear that its intention here is to assert authority and

00:49 20 to maintain the authority and not at any time to admit of a  
21 limitation on its authority. And that's the sort of thing  
22 that gets people running to Federal Courts to seek the First  
23 Amendment protection, because this is not an administrative  
24 dispute at this point. This is, in our clients' view, you  
00:50 25 know, and again, they come from a religious tradition in which

1 they consider limitations on their worship to be something  
2 imposed by, historically by sovereigns that are antithetical  
3 to their beliefs and their worship.

00:50 4 So, whether or not they would have trusted the  
5 administrative procedure that they could have utilized to  
6 challenge these orders when they first came out, sitting here  
7 now -- I appreciate the Court allowing us to sit while we have  
8 our oral argument, sitting here now in mid-June and still  
9 debating with a judge, whether it would be in the Appellate  
00:50 10 Division or here, about whether or not church services could  
11 be held under a tent, in a church, that's the systemic problem  
12 and that's the nature -- that's why the First Amendment is  
13 implicated here.

00:51 14 THE COURT: Well, look, I don't think there's any  
15 question or any disagreement that our leaders in science and  
16 politics across the board made an enormous number of mistakes  
17 during the course of this pandemic. You know, things that we  
18 were told turned out not to be true, things change, wear a  
19 mask, don't wear a mask, wear a mask. And all this stuff  
00:51 20 changed, though, during the course of these few months as the  
21 scientists and doctors scramble to figure out what this thing  
22 is all about. But isn't that the reason why the Court should  
23 exercise extreme caution? I mean we are not, these judges  
24 have no expertise in science.

00:51 25 MR. COLEMAN: Well, your Honor --



1 THE COURT: Scientists can't even get it right, why  
2 do you expect us to get the policies right?

3 MR. COLEMAN: We're not asking the Court to set  
4 policy, your Honor, we're asking the Court rather to defer to  
00:52 5 the First Amendment. And there's the point at which policy  
6 making -- we recognize that all the Con -- every right in the  
7 Constitution is subject, and particularly the First Amendment  
8 is subject to the time, place and manner restrictions. We  
9 understand that. Courts are called upon to draw lines every  
00:52 10 day. And what my clients submitted, your Honor, is that we've  
11 crossed that line. If we hadn't crossed it on May 26th when  
12 these papers were filed, we've certainly crossed it by now.  
13 The State has in no way demonstrated that it is -- let me  
14 withdraw that.

00:52 15 Again, when we say let's defer to the State, if we  
16 refer to the regular operation of the State through its normal  
17 administrative and legislative and municipal functions, health  
18 is typically -- you know, issues with respect to gatherings  
19 and public health are usually managed at the municipal level.

00:53 20 When Asbury Park decided to depart from the guidance or the  
21 detente that was issued by the State last week, the Governor  
22 made it very clear that that would not be tolerated. Well,  
23 that's -- okay, that order's not in front of the Court right  
24 now. But we submit, your Honor, that that line has been  
00:53 25 crossed. And the fact that the Governor is in a position now

00:53 1 of presumptive validity -- we understand that a government  
2 action is entitled to a presumption of validity. What we have  
3 tried to get across to the Court, especially in our  
4 supplementary submission merely of facts last week, was that  
5 that presumption is no longer valid. And, your Honor, again,  
6 there's a great deal of reason to be skeptical of using  
7 out-of-court statements by political figures as a window into  
8 judging the validity of their official work. We've seen it  
9 happen at the national level, and it has not necessarily been  
00:54 10 a fruitful approach to the truth seeking function of the  
11 courts.

12 Having said that, when we're talking about the  
13 presumption of validity in which conduct of the State is  
14 clothed, it is appropriate to look at how those making the  
00:54 15 decision treat the conduct that's being regulated themselves.  
16 So, yes, it's true that judges don't know any better than  
17 governors, and perhaps governors are even entitled to a  
18 presumption that they know better than judges. But we're  
19 entitled to ask the Court to look at how government conducts  
00:55 20 itself, not only how a government goes about folding  
21 wherefores into executive orders.

22 THE COURT: But it's not a question of who knows  
23 better. As the Chief Justice reminds us, and he's been very  
24 consistent about this throughout his career, governors are  
00:55 25 answerable to the people, judges are not. Federal judges are

1 not answerable to the people. That's the big difference as to  
2 who's going to make these kinds of decisions.

3 I mean, there's no evidence in this case that -- I mean  
4 we're talking about what's motivating the Governor, we're  
00:55 5 talking about why he makes these distinctions, some of which I  
6 think many people would say, would agree with you that don't  
7 seem to be very rational. But there is no evidence that any  
8 of these decisions come to any kind of anti-religious bias.

9 You know, people traveling to and from religious services were  
00:56 10 exempted from the first order. They were one of the nine  
11 exemptions. He's always permitted drive-through services.

12 They've never closed the houses of worship, though they closed  
13 a lot of retail stores around the state. Now the trend seems  
14 to be opening more and more you can have unlimited outdoor  
00:56 15 services. You can have increased limits at indoor services.

16 The regulations now permit where you're supposed to be wearing  
17 face masks, you can remove your face mask for religious  
18 purposes, I assume that's communion and maybe baptisms. But  
19 that's getting, the trend clearly is more and more favorable  
00:57 20 to religions, and there's no evidence whatsoever, is there, of  
21 any anti-religious bias. Regardless of what's motivating the  
22 Governor, anti-religious bias is not one of those factors,  
23 correct?

24 MR. COLEMAN: We have no -- well, your Honor, I would  
00:57 25 submit this. The Governor made a very strong statement in

00:57 1 attending a demonstration that the First Amendment at that  
2 juncture should trump concerns over spread of disease. He did  
3 not make the same statement with respect to his promulgation  
4 of regulations concerning First Amendment exercise of free  
5 religion.

00:58 6 That, now, as your Honor knows from many years on the  
7 bench, is extremely unusual in a Section 1983 case to find a  
8 smoking gun, to find that e-mail, or going back to earlier  
9 days in our career, that memo or that overheard conversation  
10 where someone says, let's screw the churches, let's get these  
11 people and prevent them from worshipping God because Satan is  
12 our master. I don't expect ever to find, if I were to do this  
13 case and dig through millions of e-mails, I don't expect to  
14 find anything like that.

00:58 15 I'm sitting here with highly sophisticated  
16 professionals from the Law Department and the Attorney  
17 General's Office, that's not how they operate, I know that.  
18 What this Court is entitled to do is to say, what is the State  
19 doing? Is there animus? There's no proof of animus. Is  
00:58 20 there disparate treatment? There is disparate treatment.

21 Because no one was arrested at the Trenton War Memorial. No  
22 one was arrested in connection with a failure to observe  
23 social distancing requirements at the BLM demonstrations.  
24 That means that the State has one attitude towards a certain  
00:59 25 kind of First Amendment exercise and another attitude towards

1 another kind of First Amendment exercise.

2 And, your Honor, we're not talking about animus, we're  
3 talking about a Constitutional requirement that First  
4 Amendment rights are actually supposed to be privilege. We  
00:59 5 should not be here asking why can't I have as many people in  
6 my thousand seat sanctuary as a Home Depot is allowed to have.  
7 We should be -- the premise should be that the sanctuary comes  
8 first, then the Home Depot.

9 And the State -- and Justice Roberts, your Honor, fell  
00:59 10 prey to this as well in his very short decision in an entirely  
11 different procedural posture, in which he said, well, people  
12 spend a long time in church, people don't spend that long in a  
13 grocery store. There's no record evidence of that whatsoever.  
14 I've gone shopping since COVID began, no one told me how long  
01:00 15 I can stay in ShopRite in Nutley. No one's following me  
16 around in Home Depot to see you how long I stay in there. And  
17 there were -- everyone here knows that there were nice blue  
18 tape arrows on the floor in March and April when you went into  
19 the supermarket. They're gone now. There's -- and that's  
01:00 20 great, that's great because it's not necessary.

21 The fact that we can say, well, the State has been so  
22 gracious so far, look how far they've come, they've given us  
23 permission now to have as big of an outdoor -- your Honor,  
24 certainly if I walked in here in February and said, your  
01:00 25 Honor, the State has just enacted a regulation, pursuant to

01:01 1 which only -- religious services may only take place outdoors,  
2 and the good news is that the weather is going to be great, I  
3 think we would all agree that that would be a problem. It's  
4 not enough -- the State cannot say that outdoor worship is  
5 sufficient. What the State can say is we've got a general  
6 rule concerning conduct, concerning capacity. I mean, one  
7 thing I have not heard because we haven't really heard from  
8 the State yet, but one thing that I still do not see in their  
9 papers is the justification.

01:01 10 Your Honor, again, if we're going to quote Justice  
11 Roberts, who gets into the weeds of -- I mean, essentially  
12 Justice Roberts in his opinion says -- he weighs the factors,  
13 he weighs the factors and says, well, people stay in church  
14 longer. The State in its papers talks about church choir  
01:01 15 practice and spikes or vectors that have arisen as a result of  
16 religious worship, not necessarily religious worship involving  
17 social distancing and masks. So, we are getting into the  
18 weeds. And when we get into the weeds, it's entirely  
19 appropriate to compare what is enacted for, for shopping,  
01:02 20 what's happening at the shore, what's happening at the War  
21 Memorial, and say, without assigning animus it is still a  
22 problem for the State to fail to assign Constitutional  
23 significance to plaintiffs' rights.

01:02 24 That's why we're here, your Honor, not because the  
25 Governor is trying to wipe out religious worship in this state

1 but because he has made a decision which is Constitutionally  
2 inappropriate, which is that marching for political causes is  
3 a sufficient basis for relaxation of strict control,  
4 worshipping indoors is not. That's Constitutionally suspect.

01:02

5 I don't need the smoking gun, I need only to look at the  
6 factual record.

7 THE COURT: Well, the Chief Justice did get into the  
8 weeds. We have to deal with that, that he did. And can it be  
9 argued with? Well, you know, I've been in Home Depot and  
10 Lowes, people aren't just going in and grabbing something off  
11 the shelf and leaving, I mean they're sitting down with the  
12 kitchen people, they're sitting down with the flooring people  
13 for hours at a time planning a design. I get that. But  
14 that's what the Chief Justice said.

01:03

15 MR. COLEMAN: That's what the Chief Justice --

16 THE COURT: The State's response, I'm going to hear  
17 from them next, is look, it's not really relevant because all  
18 we need is a rational basis. We don't have to have been a  
19 hundred percent correct when we made the decision, we just  
20 need to have had a rational basis when we made that decision.  
21 That's what they're going to say, I'm pretty sure.

01:03

22 MR. COLEMAN: Your Honor, that basis may have been  
23 rational, it may have been rational two weeks ago, it's not  
24 rational now. The conduct of the Governor at these  
25 demonstrations speaks volumes about the -- and Chief Justice

01:03

01:04 1 Roberts did not have that in front of him. He did not have  
2 the pictures that we're all seeing coming out of the major  
3 cities of people in massive demonstrations, shoulder to  
4 shoulder, gathering together, COVID went out the window.  
01:04 5 That's not the fault of the State of New Jersey, but what the  
6 State of New Jersey does do in New Jersey tells us what, what  
7 the State itself considers to be rational. And what the State  
8 considers to be rational is that adults who are healthy, who  
9 are young, or who are old, make their decisions for  
01:04 10 themselves.

11 We, we -- and again, your Honor, also in terms of the  
12 rational basis, I also want to point out there's a gigantic  
13 problem here with the idea that this incremental release of,  
14 of authority which at no time has the State ever suggested  
01:05 15 that it would not, that it would have any reluctance  
16 whatsoever to turn right back around and reimpose all these  
17 restrictions. There's nothing stopping it from doing so. You  
18 know, and again, we're asking the Court to draw a line, we  
19 believe that that line has been crossed. That after the  
01:05 20 demonstrations and after the openings of the beaches, and  
21 after the openings of retail, there's no longer a -- what is  
22 the rational -- again, the rational basis that is positive.  
23 Merely calling something a rational basis doesn't make it  
24 rational.

01:05 25 And we submit that we don't know what Justice Roberts



01:06 1 had in front of him in the California case that's now back  
2 before the Ninth Circuit. We do know that in this case, the  
3 State's rationalization for what it represents to be a  
4 rational basis for its decision about outdoor worship on  
5 June 15th, on June 15, 2020, is no longer rational. We have  
6 references again to 1998 tuberculosis studies involving church  
7 choirs. It's 2020, it's not tuberculosis, it's not a choir.  
8 Talking about worship requires a very big difference.

01:06 9 THE COURT: Well, the thing, Mr. Coleman, many of  
10 your clients want is to have singing.

11 MR. COLEMAN: Yes.

12 THE COURT: In church and all that.

01:06 13 MR. COLEMAN: As a former choir member, I can tell  
14 the Court there's a very big difference between sitting in the  
15 catacombs of a church and practicing, you know, your mouth is  
16 open the entire time and you're sitting next to -- you know,  
17 all the tenors are sitting together, and over there the big  
18 tough bases are sitting together. That is very different from  
19 coming into church, sitting six feet away from another church  
01:07 20 member. And, yes, there'll be singing, but there'll be masks.  
21 It's a different experience, it's not the same.

01:07 22 I certainly understand the Court's reluctance to  
23 micromanage and to second guess. It's entirely consistent  
24 with what Chief Justice Roberts and his mentor have always  
25 taught with respect to judicial restraint, it's appropriate.

01:07 1 We're here now precisely because we were not here in March.  
2 If we would have come in March, if we would have come in  
3 April, we could not make these arguments. But what the facts  
4 on the ground now tell us is that what may have once been a  
5 rational basis is no longer rational. And that this Court at  
6 the very least, and yes, we do believe the Court has the  
7 ability to say that this entire regulatory scheme or this  
8 quasi-regulatory scheme has outlived any Constitutional  
9 justification on, on vagueness grounds, which was not in front  
01:08 10 of the Chief Justice given the complete discretion vested in  
11 the State Police. And on, on First Amendment grounds, both  
12 free speech and free exercise, but at the very least,  
13 certainly the cap on indoor services, doesn't seem to be any  
14 rational basis for that at all.

01:08 15 THE COURT: Mr. Coleman, I admire your passion, but  
16 I'm going to give you a chance to catch your breath.

17 MR. COLEMAN: Thank you.

18 THE COURT: I'm going to talk to the State for a  
19 little while.

01:08 20 MR. COLEMAN: I'm glad to say I went through my  
21 Corona experience a couple of months ago, so I've got the  
22 breath for it. Thank you.

23 THE COURT: Have you ever run for political office?

01:08 24 MR. COLEMAN: No, thank you. I assume that your  
25 Honor means the question in the nicest possible way.

1 THE COURT: Really I'm trying to encourage you. I  
2 admire your passion for this issue. It's great.

3 MR. COLEMAN: Thank you.

4 THE COURT: We need people like you.

01:09 5 MR. COLEMAN: I am here. I am here.

6 THE COURT: Well, you may have the wrong audience for  
7 your passion.

8 All right. Before we turn to a discussion of exactly  
9 what the Chief Justice meant in that concurring opinion, I  
01:09 10 want to ask the State whether or not they want to make any  
11 comments, because we talked a lot about facts and policies and  
12 things of that nature. Do you want to talk about any of that  
13 before we get any discussion on the legal parameters of the  
14 First Amendment litigation?

01:09 15 MR. FEIGENBAUM: Sure. And thank you for the  
16 opportunity to do so, your Honor.

17 I think it would be helpful just to begin with why the  
18 State continues to believe that the emergency is ongoing and  
19 why it's important to have the kind of gradual reopening plan  
01:09 20 that the State has had to date which has significantly lifted  
21 many of the restrictions on gatherings, especially as it  
22 relates to religious services, and demonstrates I think that  
23 the State is quite solicitous of religious services, and  
24 certainly harbors no animus or efforts to I think undermine  
01:10 25 religious services. But instead, is doing its level best

1 right now in the face of uncertain and developing science to  
2 figure out how to limit the spread of COVID-19 while at the  
3 same time expanding our testing and contact tracing program so  
4 that we can lift the restrictions even further.

01:10

5 I think an important point of, to borrow your Honor's  
6 phrase, I'll call them the churches as well for the purpose of  
7 this discussion. I think an important point raised by the  
8 churches is their view that what might have been rational a  
9 couple of months ago is no longer rational today. But I think

01:10

10 one of the core tenets of the Chief Justice's opinion,  
11 understanding we'll get into that framework in a minute, is  
12 that it has to be the state and their elected leaders who  
13 ultimately make the call about when the facts on the ground  
14 really support a significant number of changes in the face of  
15 the sort of developing body of science. It is true that there  
16 aren't control group experiments about COVID-19 and no  
17 long-term observational studies because we've all been living  
18 with COVID-19 for just a couple of months now.

01:11

19 So, what the State is doing through the process of  
20 gradual reopening rather than simply lifting all restrictions  
21 at once is essentially changing the rules step by step, as  
22 your Honor noted, allowing drive-in services, then allowing  
23 outdoor services of up to 25, now allowing indoor services of  
24 50 and unlimited religious services outdoors. And it's going  
25 to assess based on the changes in the rate of hospitalization,

01:11

1 the rate of infection from one COVID patient to another, the  
2 ability of our contact tracing programs to handle the spread  
3 of COVID-19 that we see on the ground.

01:11 4           Once we take all of those factors into account, we'll  
5 be able to continue marching forward, hopefully, with  
6 additional reopenings. That's not true just in the gathering  
7 context, which is obviously the provision that affects  
8 religious services, but that's true when we talk about indoor  
9 dining, like the reference Mr. Coleman made to Asbury Park, or  
01:12 10 when we talk about indoor recreation like we're talking about  
11 with gyms. The idea that each time the State is going to  
12 assess what the data shows based on the changes the State has  
13 made and then to continue moving forward accordingly.

01:12 14           And I think that's why New Jersey has seen tremendous  
15 progress over the past couple of months at the exact same time  
16 as we're starting to see spikes based on more quick reopenings  
17 without the gradual steps taken here, elsewhere in this  
18 country. So, I think it's fair to say that unfortunately the  
19 emergency is not over, and we have certainly not banished  
01:12 20 COVID-19 from the state or from the country, and so it  
21 requires continuing to seriously relax the restrictions that  
22 we've had, but to do so thoughtfully and while building data  
23 in the progress. It's why as much as I wish I was standing at  
24 a podium in your Honor's courtroom right now, we're still  
01:13 25 engaging in a sort of Zoom conversation. Because every branch

1 of government, Federal and State, is gradually taking steps to  
2 try to expand its operations as much as possible.

3 I think there were just a few points that I wanted to  
4 respond to, and to the degree that your Honor thinks we're  
01:13 5 bleeding into the discussion of *South Bay*, and to the degree  
6 your Honor would like to stop with any questions about that  
7 decision and its contours, obviously more than happy to do so.

8 THE COURT: We're going to get to that, obviously.

9 MR. FEIGENBAUM: So I think that there are three  
01:13 10 general points that will relate to the disposition of this  
11 case. The first is essentially the validity of these rules  
12 generally. The second, which is I think a focus of  
13 plaintiffs' argument this morning, is the validity of the  
14 rules in light of the Governor's decision to march in one  
01:13 15 particular protest. And I think the third are some of the  
16 equitable arguments that I will touch on very briefly, because  
17 I think your Honor has already walked through why under  
18 Executive Order 152 there's such a significant change in the  
19 degree of irreparable harm and in the equities to the degree  
01:14 20 that they would support preliminary relief at this stage.

21 So, briefly on the face of the orders themselves and  
22 their validity, obviously, and as the Chief Justice himself  
23 explained, the plain text of the order covers gatherings  
24 regardless of purpose. The regardless of purpose language is  
01:14 25 in fact used directly in some of the executive orders. And

1 that is very much the State's regime. To the church and the  
2 choir, to the Bible study and the book club, the idea of equal  
3 treatment which was the focus of the Chief Justice's opinion.

4 Now, Mr. Coleman has raised a couple of contexts that  
5 he says suggest that this whole regime is actually irrational.

6 That no reasonable state essentially could think that their  
7 rule is properly protecting the residents in a sensible way  
8 from COVID-19. And he used three examples. One was the  
9 analogy to retail, whether it was Home Depot or grocery

10 stores. The second was the contrast between treatment  
11 outdoors and treatment indoors. And the third was his point  
12 that capacity limit based on percentage would appear to be  
13 enough, and you wouldn't need some sort of fixed numerical  
14 capacity placed on top of that, that including that sort of  
15 number would be irrational.

16 I'll take them briefly in turn, and then once I discuss  
17 that, I'll turn to Mr. Coleman's point about the purported  
18 selective enforcement and the Governor's decision to  
19 participate in an outdoor protest.

20 So, with respect to the Home Depot and grocery store  
21 analogy, as I think your Honor has already noted, that was  
22 asked and answered directly in *South Bay*. A majority of the  
23 Supreme Court allowed California's restrictions to stand, and  
24 the Chief Justice explained why, including the direct contrast  
25 to contact like shopping and retail, whether Home Depot or a

01:16 1 grocery store. I think the point for why it might be rational  
2 for states to conclude that that contact could be different is  
3 not that every single individual interaction in a grocery  
4 store is shorter than every single interaction in a house of  
5 worship. It is, of course, possible that someone would come  
6 into a house of worship for five minutes, come to a service  
7 and quickly leave. You could imagine someone's child coming  
8 in, deciding they actually want to go to the basement instead  
9 and find the games that the church has, and leave quickly.

01:16 10 And, of course, it's possible that someone in Home Depot could  
11 be there for an hour or two at a time trying to learn about  
12 the latest products relative to their home.

01:16 13 But the Chief Justice's point, and I think this is  
14 certainly true especially during an emergency, is that states  
15 are moving forward on a categorical basis where they're  
16 assessing categorical risks relative to COVID-19 transmission.

01:16 17 And the Chief Justice, we believe, correctly assessed that  
18 it's certainly rational for states to conclude that as a  
19 categorical basis, interactions in grocery stores tend to be  
20 much more fleeting and quick lived, especially between two  
21 given individuals, than it would be in a place designed to  
22 bring together, wonderfully in the State's view, fellowship  
23 and community and the like. So, I think that helps explain  
24 why the Chief Justice reached the decision that he did, and  
01:17 25 why it's rational for New Jersey to have done exactly what



1 California decided to do.

2 The second distinction that Mr. Coleman focuses on and  
3 asserts is irrational is the distinction between the treatment  
4 of religious services when they happen indoors and when they  
5 happen outdoors. Obviously, no one is suggesting that that  
6 distinction in any way discriminates against religion.

01:17

7 Whether you're indoors or outdoors has nothing to do with  
8 religious versus secular. And in fact, outdoor religious  
9 activities are getting preferential treatment as compared to  
10 analogous secular gatherings, which reflects the State's  
11 efforts, something the Chief Justice contemplated they could  
12 do in *South Bay*, to in fact prefer religious activity when  
13 possible in a period of lower community spread and in a lower  
14 risk activity like outdoors.

01:17

15 And if your Honor is looking for information to help  
16 justify the outdoor/indoor distinction as a matter of rational  
17 basis, the executive orders themselves lay out significant  
18 reason to think that outdoor spaces are considerably safer  
19 relative to COVID-19. And Exhibit BB, which is included at  
20 Docket 32-4 is advice from the CDC relative to large  
21 gatherings which specifically recommends that they take place  
22 outdoors instead of indoors when possible.

01:18

01:18

23 And there's a good reason for that. Even leaving aside  
24 that social distancing is often much more possible outdoors  
25 than it is indoors, the fact that you have an open air system

01:18

01:18 1 as opposed to a closed ventilation system also makes it harder  
2 for COVID-19 to spread further than the six feet that we're  
3 all focusing on, which is not talismanic and is not a  
4 guarantee if you're six feet away in a closed ventilation  
5 system that you will be protected from someone else. And  
6 also, as studies are beginning to show, issues like sunlight  
7 and heat and humidity and wind all have an impact on  
8 destroying the virus carrying particles that are released when  
9 someone coughs or sneezes or sings, or even talks loudly. So,  
01:19 10 for all of those reasons, it's certainly rational for the  
11 State to have a strong preference for outdoor activities over  
12 indoor activities.

01:19 13 And as your Honor is well aware from the colloquy with  
14 plaintiffs' counsel, in that area where the risk is lower and  
15 where we're able to prefer religious activity, the State no  
16 longer imposes any numerical restriction on the ability of  
17 churches to have religious services outdoors, in a park, in  
18 their parking lot, what have you, given the lower risks found  
19 there.

01:19 20 So then the question becomes is it still rational to  
21 have a 50 person limit on indoor spaces regardless of the  
22 percentage capacity of the particular room. And as the Chief  
23 Justice noted, rational basis is the right test because that's  
24 true whether or not you're talking about an indoor concert or  
01:20 25 an indoor worship service or indoor seminar or book club. And

1 the reason that we have that I think is both based on the  
2 science and based on the law.

3 So, the science based argument is that in gradually  
4 lifting our number in the way that we have, we're able to  
01:20 5 collect the data and find out if a 50 person limit is still  
6 necessary. And critically, it also allows us to put together  
7 a functioning contact tracing program. So the idea behind  
8 increasing testing and increasing contact tracing is that the  
9 State will be able to identify all those who are diagnosed  
01:20 10 with COVID-19, and then to identify all those with whom they  
11 may have had interaction, including if they risked spreading  
12 COVID-19 even while they were asymptomatic.

13 And the problem with allowing for such large events,  
14 say you have a 50 percent capacity limit in a room that serves  
01:20 15 a thousand, which is I think is one of the examples presented  
16 here, is that you're not just talking about 500 people and  
17 phone calls to those 500 people for the contact tracers, but  
18 you're talking about phone calls to everyone that each of  
19 those 500 people went and interacted with. Or I guess if you  
01:21 20 say 50 percent of that, then you're at 250. At some point in  
21 a burgeoning contact tracing program, the State needs the  
22 ability to reach everyone to the best degree possible that may  
23 have been exposed to COVID-19, because that is what's going to  
24 allow us, just like other countries with more significant  
01:21 25 contact tracing programs did a couple months ago, to fully

1 reopen as much as possible to what the Governor has called  
2 phase four, which is the full reopening with certain  
3 protections, you know, like masks or general social distancing  
4 and the like, to the degree possible.

01:21 5           Allowing essentially congregate activity at high  
6 numbers simply based on the capacity of a room would present  
7 serious challenges for the contact tracing program. Something  
8 that we can bear in an outdoor context because the risk of  
9 COVID-19 spread is so much lower, but something that the State  
01:22 10 could rationally conclude is just too risky to allow in indoor  
11 closed ventilation systems.

12           So, I think that's everything until your Honor has  
13 questions about *South Bay* or the general face of the EOs, that  
14 I would say about how the EOs operate on their face. Which I  
01:22 15 think would then turn to the question that Mr. Coleman has  
16 raised about the ability of certain protests to take place  
17 outdoors that have been happening in the state, and what that  
18 means now going forward under Executive Order 152. And  
19 obviously also responding to the fact that the Governor  
01:22 20 himself participated in one.

21           So, right at the outset, I'd like to note that all of  
22 Mr. Coleman's clients can prospectively, under Executive  
23 Order 152, do everything that he's highlighting that the  
24 protestors have been able to do. They were marching together  
01:23 25 outdoors, they were engaging in large congregate activity, I

01:23 1 don't disagree with that at all. But every single church that  
2 wishes to hold a large outdoor service is now able to do so.  
3 So, even to the degree that Mr. Coleman's arguments about the  
4 single context of Black Lives Matter protests call into  
5 question the broader orders themselves, and I'll give reasons  
6 why I don't think that's right. I wanted to simply note at  
7 the outset that it wouldn't give plaintiffs any right to the  
8 relief they're seeking, which is not to do what the protestors  
9 did because, again, under Executive Order 152 they are allowed  
01:23 10 to do what the protestors did. They want to do something  
11 else, something that no one has been allowed to do, which is  
12 to hold large gatherings of more than 50 people indoors at a  
13 time when we're still building our contact tracing programs,  
14 and at a time when public safety is still at risk while we're  
01:23 15 seeing COVID-19 spikes happening elsewhere in the country that  
16 do have larger indoor gatherings than we do.

17 I also think it's important to rebut any idea that  
18 there's been some sort of selective enforcement program here  
19 that suggests that one group is engaging in speech that the  
01:24 20 State welcomes and they don't have to worry about COVID rules,  
21 and then religious folks are disfavored and there's  
22 anti-religious animus here. So, the relevant case that we  
23 cite in our brief on the selective enforcement point is the  
24 *Tenafly* case. And I think that shows what it means to have  
01:24 25 selective enforcement. The question becomes is your law that

1 appears facially neutral really just a pretense to be going  
2 after religious conduct in even the conduct of a particular  
3 religious sect.

01:24 4 So, in the *Tenafly* case, there was a facially neutral  
5 order that prevented posting items on telephone poles, but it  
6 turns out everyone had been allowed to post items on telephone  
7 poles; advertisements, holiday displays, house numbers, orange  
8 ribbons, you name it. But when a group of Orthodox Jews  
9 wanted to post items on telephone poles that was necessary for  
01:25 10 them to build what's known as an Eruv, which is important for  
11 religious practice on Shabbat, the sabbath, it was very clear  
12 that Tenafly said no to them specifically to block their  
13 religious practice from taking place.

01:25 14 This case is at the opposite end of the spectrum.  
15 There's no suggestion that religion alone has been focused on,  
16 or even especially targeted by the gatherings requirement, and  
17 instead there's only a suggestion that one set of protests,  
18 the Black Lives Matter protests, had been able to proceed  
19 despite the COVID rules. But that does not demonstrate the  
01:25 20 kind of selective enforcement that we're talking about here,  
21 because the reason was not to savoring (sic) of religion, and  
22 instead the reason was that law enforcement officers in all  
23 charging decisions need to balance public safety and public  
24 health.

01:25 25 And in the specific context of protests that were about

01:26 1 law enforcement and law enforcement's relationship with the  
2 community, the spectacle of law enforcement officers charging  
3 those protestors and issuing them summonses or tickets would  
4 have been cause for serious public safety concerns of the kind  
5 that we saw across the country that thankfully was by and  
6 large avoided in New Jersey. Including I would say right here  
7 in Camden, if we were in Camden at the moment, but including  
8 in Camden where law enforcement officers obviously made the  
9 choice that that kind of non-enforcement in that context of  
01:26 10 those protests was going to be better for public safety. It  
11 wasn't a suggestion that COVID-19 laws don't apply or that  
12 religious conduct is less important than secular conduct, it  
13 was a sensible call based on law enforcement prosecutorial  
14 discretion.

01:26 15 And to really I think put a finer point on what was  
16 going on there and how it had nothing to do with  
17 anti-religious bias or religious animus from the Governor or  
18 from law enforcement officers, I would point to Docket 32-4,  
19 Exhibit Y, which is a collection of the charges that have been  
01:27 20 issued under the executive orders that the Attorney General  
21 was putting out daily and then weekly as the crisis was  
22 unfolding. And if this Court -- I'll just name a list of  
23 pages for the record and for you later, but essentially if  
24 this Court looks at Pages 35, 36, 41, 44, 48, 55, 59, 78 and  
01:27 25 82, this Court will find examples of enforcement action that

01:27 1 were taken relative to gatherings that were entirely secular  
2 in nature, including outdoor gatherings. So that might be an  
3 engagement party or a birthday party, or it might have been a  
4 large backyard party that took place with a concert in Rumson,  
5 that was Page 44. Or an outdoor gambling event with 19  
6 people, that was Page 55. Or 40 people outdoors together  
7 drinking, that was Page 82.

01:28 8 The point isn't whether or not a particular plaintiff  
9 might agree with each of those actions, the point is that they  
10 demonstrate quite clearly that what's going on in New Jersey  
11 is not in any way anti-religious bias. And instead, the  
12 enforcement of the rules demonstrate that they're being  
13 applied on an even handed basis to religious conduct and to  
14 secular conduct alike, and that it's certainly rational to  
01:28 15 continue having a program like that.

16 So then plaintiffs come back and say, we disagree with  
17 that, we think there was selective enforcement, and we have to  
18 be allowed to do something that takes place indoors instead.  
19 But unfortunately, that argument would have no stopping point.  
01:28 20 If you're not asking to do the thing that was essentially the  
21 basis of the asserted selective enforcement, then how far does  
22 someone get to go. Right now it's that they don't want a  
23 numerical cap, but the next set of plaintiffs, and the State  
24 is already facing a lawsuit from plaintiffs situated like  
01:29 25 this, might be that someone doesn't have to wear masks



01:29 1 anymore. Or it might be that someone wants to open a gym or  
2 it might be that a casino wants to reopen. None of those  
3 which were at issue in what the protestors were doing, but if  
4 selective enforcement remedies could go beyond that would  
5 really I think open up a can of worms, and it's never been the  
6 way that the law's been applied in the past.

01:29 7 So, I want to touch briefly on why the Governor's  
8 participation in a specific protest does not change this  
9 analysis. And I think your Honor has already touched on this,  
10 so I'll just flush it out slightly. Which is that whether or  
11 not a public official complies with the law is actually  
12 immaterial to the law's validity itself. There may well be  
13 political or policy or legal consequences for the public  
14 official, but there aren't consequences for the state's law.

01:29 15 And there's a good reason for that, which is that the  
16 political policy or legal consequences run to the Governor  
17 himself. But finding a law invalid actually harms society,  
18 the benefits of that law.

01:30 19 And this is a perfect example. The public health risks  
20 of large indoor gatherings are to the residents who would  
21 later interact with those parishioners. Not even just the  
22 ones who chose to participate in a church gathering, but the  
23 ones who are later interacting with them, their neighbors,  
24 their family, their friends. It's not to the Governor  
01:30 25 directly. And that's why the consequence of the Governor

1 participating in a march is exactly what your Honor suggested,  
2 and is in no way what plaintiffs have pointed to.

3           And I think a few analogies might help put a finer  
4 point on this. So if you imagine a governor is caught  
5 speeding, which has happened in this state and happened in  
6 other states in the past. There are consequences for the  
7 governor, but there are no consequences to the speeding law in  
8 the State of New Jersey or in any other state. And that's  
9 true even when you're talking about a Constitutional analysis.

10 So, if a governor in a state that bans the possession of  
11 assault weapons is caught with a machine gun, there will be  
12 consequences for the governor of the political policy or legal  
13 kind that we've been discussing, but there won't be  
14 consequences for the validity of the firearms law under the  
15 Second Amendment.

16           And this context is exactly the same. And I would also  
17 again just note that to the degree that plaintiffs wish to  
18 engage in conduct that the Governor did, they are free to do  
19 so under Executive Order 152. They want to engage in  
20 different conduct that is indoors and that the State has  
21 always rationally concluded is significantly more dangerous,  
22 including up until we're able to have a fully, more robust  
23 contact tracing program.

24           And that really leads us to the equities, to the final  
25 consideration so critical we think to the preliminary

01:31 1 injunction stage, which is that we are in the middle of a  
2 reopening plan, and I cannot sit here and give you, like I did  
3 two weeks ago, an exact date and an exact number when the next  
4 reopening will happen. But that's because last time when we  
5 had our status conference, we knew that we were in the middle  
6 of doing those changes based on what the data was showing us.  
7 And, you know, we suggested they would be significant, and I  
8 think as your Honor has noted, the changes really were  
9 significant. Fifty is not just a far cry from ten, but  
01:32 10 unlimited outdoors is certainly a far cry from 25 outdoors.

11 What I'm telling you now is that the State is committed  
12 to continuing with the reopening plan, but to do so in the  
13 same kind of gradual way that the Chief Justice suggested in  
14 *South Bay* is the kind of call that a state's elected leaders  
01:32 15 are entitled to make, and that will allow us to avoid the  
16 spikes we're starting to see elsewhere. To the degree that  
17 the delay your Honor noted in this case comes from the fact  
18 that plaintiffs waited a few months to file and did not go to  
19 State Court, that just puts a finer point on it.

01:32 20 You know, there are a number of pending challenges to  
21 the executive orders that are in State Court right now. And  
22 it's certainly possible that as part of the broader reopening,  
23 other challenges will be filed in those courts. But what  
24 doesn't need to happen is for a Federal Court to come in and  
01:32 25 issue a mandatory injunction at this stage that would

1 essentially upend the status quo in the midst of a careful  
2 reopening plan.

3 And with that, I will turn it over to any questions  
4 your Honor may have.

01:33

5 THE COURT: I don't, but I want to focus now on the  
6 *South Bay* case, and I'll ask Mr. Coleman some questions about  
7 that. You know, before the *South Bay* case there were Circuit  
8 courts on both sides of this issue of whether to impose  
9 injunctions against these closure orders. And it came to the  
10 Supreme Court in a rather uncommon way.

01:33

11 MR. COLEMAN: Yes, your Honor.

12 THE COURT: Well, it didn't come up as a direct  
13 appeal, although there's litigation working its way up through  
14 the courts. This is an application to a single Justice,

01:33

15 Kagan, who referred it to the Court, and then the Court by a  
16 vote of five to four declined to enter an injunction. And the  
17 Chief Justice then writes his concurrence. And historically  
18 maybe he'll talk some day as to why he thought it necessary in  
19 this case, but he did. And he talks about the standard for an

01:34

20 injunction when you're at the Supreme Court being the legal  
21 rights are indisputably clear. And that's particularly where  
22 the District and the Circuit courts have refused to grant the  
23 injunction.

01:34

24 And you go back in history, in the last 35 years there  
25 have been a handful of injunctions entered by the Supreme

01:34 1 Court, and it's not real clear what standards they're using,  
2 but let's go with what the Chief Justice says is the standard  
3 in the *South Bay* case. How is that standard really different  
4 from the four factors you need to show in this Rule 65  
5 application?

01:35 6 MR. COLEMAN: Well, your Honor, it appears to be  
7 different because it is repeatedly characterized as being  
8 different, including by the Supreme Court. It is  
9 understandable just as a matter of the normal operation of our  
10 court system that asking a reviewing court to review a  
11 decision by a lower court requires a higher standard because  
12 the lower court has had the full opportunity to consider the  
13 factual record in front of it, to hear the full arguments of  
14 counsel, and to schedule matters, and if it sees fit to make  
01:35 15 evidentiary findings or to request an evidentiary hearing,  
16 whatever the case may be, where the reviewing court is looking  
17 at a record, an appellate record, and is asked to review a  
18 decision based on an abuse of discretion, which is frequently  
19 a very difficult burden to overcome.

01:35 20 Here there is no -- here we're asking the Court to, to  
21 the extent that there's a discretion standard here which is --  
22 preliminary injunction standards are rife with discretionary  
23 opportunities for the court, that's not the case here. Every  
24 time -- all the more so when you get to the Supreme Court.  
01:36 25 When you have gone to a trial to District Court and a District

01:36 1 Court has denied an injunction. And an injunction, as we  
2 know, your Honor, and I think to some extent your question  
3 alludes to this, the injunction is often described as  
4 extraordinary relief. Unfortunately, we often find, and I've  
5 represented a lot of defendants in intellectual property  
6 cases, it's not as extraordinary as we would sometimes like it  
7 to be. When judges see a certain fact pattern, a certain  
8 combination of factors, it's not all that unusual for them to  
9 issue preliminary injunctions.

01:37 10 Nonetheless, when a Court has passed on whether or not  
11 to award that extraordinary relief, it is understandable as a  
12 matter of jurisprudence that an appellate court will defer to  
13 the trial court. All the more so when you get to the Supreme  
14 Court level, because now there have been two courts that have  
01:37 15 had the opportunity to review the matter. And it's asking a  
16 great deal for -- to ask the Supreme Court to come in and say  
17 it's obvious here, something patently unconstitutional has  
18 taken place.

01:37 19 Your Honor, our standard here is that we believe the  
20 record shows that insufficient care has been taken to treat  
21 Constitutionally protected conduct as it should be treated,  
22 which is with a degree of deference. That has not been  
23 evident in the record, that's our argument. We cited cases  
24 showing courts that have entered such -- that have found such  
01:38 25 violations in what we consider to be very similar

01:38 1 circumstances with respect to states imposing safety  
2 regulations on congregational worship. And in our view, this  
3 Court has ample authority to do that. It is a very  
4 different -- and I think, your Honor, I can say, you know, to  
5 an experienced jurist, you know, we often talk about the  
6 difference between the standards for a TRO and the standards  
7 for a preliminary injunction. And we all have a paragraph  
8 that we cut and paste into our briefs that the standards are  
9 the same. And yet, we all know the standards are not the  
01:38 10 same. When you walk into court and seek a TRO, you're asking  
11 the judge to do something more than when you ask a judge for a  
12 preliminary injunction under the normal circumstances of a  
13 motion, response, a reply, a hearing. It's different.  
14 It's also different when you seek a preliminary  
01:39 15 injunction in the trial court, make a showing, compared to  
16 telling the Supreme Court of the United States not only did a  
17 district judge appointed by the President of the United States  
18 blow it, but at least a panel of Court of Appeals judges blew  
19 it. Of course it's a different, it's a different endeavor  
01:39 20 altogether.  
21 THE COURT: I'm not sure I agree with your analysis  
22 that the Court of Appeals gives great deference in injunction  
23 proceedings to a District Judge. I mean, not from personal  
24 experience, I haven't been reversed on an injunction, but then  
01:39 25 again I don't grant a whole lot of them. But, you know, my

1 recollection is that the Court of Appeals moves on them  
2 immediately, the Court of Appeals, God bless them, doesn't  
3 seem to be bound by the fact findings below in these cases.  
4 And they have no reluctance to reverse them whatsoever.

01:40

5 MR. COLEMAN: Your Honor, it's possible I'm spending  
6 too much time in the Second Circuit.

7 THE COURT: Maybe. But anyway --

01:40

8 MR. COLEMAN: Before your Honor -- I know you have  
9 specific questions for me and I do want to have the  
10 opportunity to respond to some of the things that the State  
11 raised, but if your Honor has more questions for me, please.

12 THE COURT: Go ahead. We'll get to my questions,  
13 trust me.

01:40

14 MR. COLEMAN: There are a couple of concerns that I  
15 have, one is that Mr. Feigenbaum has said that right now  
16 there's no -- he can't promise as he did two weeks ago that  
17 here's the next goodie that's going to be given to the people  
18 of the State of New Jersey from the Governor. But he did  
19 allude a couple of times to something that we've never -- that  
20 is a little bit troubling, which is that it would appear that  
21 the State is holding back from authorizing outdoor gatherings.

01:41

22 And by the way, it's not true that our clients can do  
23 what Governor Murphy did. Governor Murphy, as the selective  
24 enforcement argument acknowledged, did not engage in social  
25 distancing. The event at which he took place did not feature

01:41



1 social distancing. That is a violation of the State's rules.  
2 All residents and businesses must follow State and Federal  
3 safeguarding guidelines, keep six feet between yourselves and  
4 others, face cover is not a substitute for social distancing.  
5 That didn't happen. And it wasn't only Governor Murphy who  
6 was not charged with a crime, unsurprisingly, it was the  
7 hundreds of thousands of people who attended that event.

01:41

8 THE COURT: Well, Mr. Coleman, sometimes it is good  
9 to be king.

01:42

10 MR. COLEMAN: I imagine, I would think an Article 3  
11 judge would know that as well as anyone in this conversation.

01:42

12 But it does seem as if what I'm hearing between the  
13 lines is that the State is contemplating not permitting  
14 outdoor worship -- I'm sorry, indoor worship without a cap,  
15 regardless of facility size, until it has put into place a  
16 sophisticated contact tracing program that will permit the  
17 State to track everyone who comes and goes. So, I'm getting  
18 signals, not supposed to look at faces, but here we are on  
19 Zoom and Mr. Feigenbaum's telling me that that is not the  
20 case, so, fine, that's not an issue.

01:42

21 Because certainly contact tracing is equally relevant  
22 with respect to indoor and outdoor activities. There was no  
23 contact tracing at the demonstrations, and as a practical  
24 matter, once you get to the point where thousands of people  
25 are participating in events outdoors or indoors, contact

01:43

01:43 1 tracing is a little bit of a joke I think. I'm so good, I  
2 think then we're really on the same page in terms of what  
3 we're all talking about. And I would then, you know -- that  
4 was a concern, I misunderstood it, and I'll entertain any  
5 further questions the Court might have.

01:43 6 THE COURT: Well, let's go back to *South Bay*. Since  
7 that decision came down, there have been a number of courts  
8 that have cited to a -- four in this religious gathering  
9 context, the Oregon Supreme Court, the District of Nevada and  
01:43 10 two District Courts in California. All have cited that  
11 decision and that concurring opinion by Chief Justice Roberts  
12 in denying similar applications to enjoin state governors'  
13 orders as they relate to religious gatherings. But there have  
14 been no cases whatsoever that have sought to distinguish it.  
01:44 15 In fact, in a non-religious gatherings context, there have  
16 been five or six decisions who have cited the concurring  
17 opinion in support of denying applications for injunctions in  
18 non-religious settings.

01:44 19 Again, no court has sought to distinguish *South Bay* and  
20 to say that it doesn't in any way require the denial of an  
21 injunction. What do you say to that? Why should I ignore  
22 *South Bay*? I mean, is there any doubt in your mind the  
23 Supreme Court has five votes against granting an injunction?

01:45 24 MR. COLEMAN: Yes, there is, your Honor. I believe  
25 the facts matter a lot. And the facts that have become

01:45 1 apparent since *South Bay* are compelling. I also think that  
2 procedural posture matters a lot, and notwithstanding -- I  
3 don't have the records of the cases and those that have cited  
4 *South Bay* approvingly, but I do know that in the State of New  
5 Jersey, where there is an order that prohibits indoor  
6 gatherings for worship but does not prohibit what are  
7 essentially indoor gatherings, for shopping --

01:46 8 THE COURT: Well, only some kinds of shopping. Most  
9 retail stores still are closed to customers. They have the  
10 curbside pickup and all that stuff.

11 MR. COLEMAN: Right. Any kind of shopping. I'll die  
12 on that hill, your Honor.

01:46 13 I do not believe Justice Roberts intended to take the  
14 position that as a matter of law, as a matter of  
15 Constitutional law it can be said that when you have -- that  
16 church services are *per se* more dangerous than retail  
17 experiences, that they are of longer duration or that social  
18 distancing in an indoor church service is irrelevant to those  
19 considerations. What I see Justice Roberts as having said was  
01:46 20 the findings of the courts below to that effect could not be  
21 disturbed on the record on appeal.

01:47 22 We're arguing here that on this record, that such a  
23 finding is not justified. Justice Roberts was looking at  
24 whether such a finding could be shown to have been palpably  
25 incorrect on the extraordinary basis of an appeal to the

01:47 1 Supreme Court. I would never expect any judge in this Court  
2 to feel obligated to do, to follow a decision in another case,  
3 in another procedural context, in another factual context,  
4 merely because other courts in other contexts, perhaps similar  
5 to ours but whose record is not in front of ours, merely  
6 because they've done so.

01:48 7 It's not surprising that district judges like yourself  
8 have read Justice Roberts as indicating a particular  
9 inclination. We also know that judges change their minds,  
10 justices also change their minds. And they also look at every  
11 record based on the merits of that case's record. And again,  
12 two weeks has turned out to be a very long time in the history  
13 of COVID. So we think, your Honor, that -- certainly I don't  
14 have to explain to the Court that it certainly is not bound by  
01:48 15 the decision of the Supreme Court because it's not the same  
16 issues and it's not the same posture. And certainly, the --  
17 you know, the decisions in the other District Courts are  
18 obviously influential but they're not dispositive. This Court  
19 has the ability and, you know, to make a decision based on the  
01:49 20 law as it's understood and as has been briefed by the parties.  
21 I can't do better than that.

22 THE COURT: You're fine.

01:49 23 I think you said that the State has made the decision  
24 that indoor religious gatherings are more dangerous than other  
25 indoor gatherings. Is that true, I mean they still prohibit

1 attendance at movie theaters, sporting events --

2 MR. COLEMAN: That's right.

3 THE COURT: Things of that nature. So why do you say  
4 that they've singled out religious services as being more  
01:49 5 dangerous indoors than other things that are still prohibited  
6 to be occurring indoors?

7 MR. COLEMAN: I certainly don't want to be  
8 misconstrued. This state has not singled out houses of  
9 worship, and there are other states that specifically name  
01:49 10 houses of worship as being, as constituting nonessential -- or  
11 worship as constituting nonessential activities. And that's  
12 quite Constitutionally obnoxious. And I'm grateful I live in  
13 a state that did not do that.

14 Having said that, the State is required to guard First  
01:50 15 Amendment rights under the Fourteenth Amendment. The State is  
16 required not merely to not offend the First Amendment, but to  
17 protect First Amendment rights. So, the fact that movie  
18 theaters are also closed is actually of great spiritual  
19 significance I'm sure, and is positive. But having said that,  
01:50 20 the First Amendment requires the State -- does not require the  
21 State to justify closing movie theaters to the level at which  
22 it requires the State to justify limiting the extent to which  
23 houses of worship can be used. So that's why that -- that's  
24 how that distinction should be framed.

01:50 25 And certainly there are other facilities, like large

01:51 1 stores, where no such limitations are in place at all. And I  
2 have yet to hear a rationale for it, other than people go in  
3 and shop quickly, which I just think that's the worst kind of  
4 anecdotal -- I mean listen, as an Orthodox Jew, there's a  
5 service that we say in the middle of the day called Mincha,  
6 it's the afternoon service. It takes 13 minutes in a nice,  
7 slow minion.(sic). There are synagogues two blocks outside my  
8 window here where hundreds of people can come in, show up for  
9 Mincha, be in and out in less than 10 or 15 minutes, far  
01:51 10 shorter than it takes me to go to the ShopRite in Nutley with  
11 the list of groceries from Mrs. Coleman to pick up to prepare  
12 for the next Shabbos which grows as I -- because of texting  
13 and global husband positioning technology as the shopping trip  
14 goes on.

01:51 15 So, this is entirely anecdotal, and I think, you  
16 know -- I'm trying to be a little bit funny, but the fact is  
17 it's really dangerous. Because -- and what galls me about it  
18 is that the Chief Justice of the Supreme Court made, accepted  
19 these casual, you know, assumptions about how long it takes to  
01:52 20 do what in a what.

21 And in fact, I can understand in fact if the State were  
22 to say -- and again I think it is fraught to get into how  
23 should we, how should we go about crafting a better rule,  
24 because that's not this Court's province. But if the State  
01:52 25 were to say no indoor gatherings above a certain number

1 lasting longer than X, that would sound like a very rational  
2 criterion that would capture this concept of shopping is fast,  
3 praying is slow.

01:52 4 I think my clients have much longer services as a  
5 general rule than the 15-minute Mincha that I'm referring to,  
6 but I will say this, if I were to tell them after getting off  
7 the phone or later on today that the Court ordered that  
8 they're permitted to have, to use their sanctuaries which they  
9 have put so much heart and so much effort to build, to bring  
01:53 10 their congregation together so that they can pray for 25  
11 minutes on a Sunday morning, I think that they would consider  
12 that to be a fantastic outcome. And that would be a criterion  
13 that I think would make a lot of sense.

01:53 14 But we don't have that criterion. What we have instead  
15 is -- and what I'm trying to get at, your Honor, in terms of  
16 the State's attitude is not so much a matter of selective  
17 enforcement because that is a hill that no litigator really  
18 hardly ever wants to die on, especially someone who does a lot  
19 of intellectual property work.

01:53 20 As a general matter, though, what is the State's  
21 attitude towards protecting the First Amendment rights. What  
22 we find here is that it puts them in the category of movie  
23 theaters, puts them in the category of beer halls. That's not  
24 appropriate. It has to do better for the First Amendment.

01:54 25 And if looking at these neutral criteria that make beer halls

01:54 1 and movie theaters and churches the same, what we find is that  
2 people spend a long of time in them, then that's the axis that  
3 we should be focusing on, not the absolute number. Because by  
4 the State's argument, if I were to hire -- I almost said  
5 Giants Stadium -- MetLife Stadium, and space people every  
6 100 feet, well, I guess that's a -- I don't know whether  
7 that's an outdoor or indoor, but if we consider it indoor,  
8 that would that would be a -- it's an irrational criterion.  
9 If we were talking about egress and ingress requirements being  
01:55 10 staggered, I can think, again, as an amateur, you know,  
11 bureaucrat, I can think of lots of approaches here. But what  
12 we're arguing is that bright-line rules, broad strokes made a  
13 lot of sense in March, they made a lot of sense in April, they  
14 started making a lot less sense in May. In June, on  
01:55 15 June 15th, they don't make sense, they're not Constitutionally  
16 supported. That's our argument.

17 THE COURT: Mr. Coleman, I hate to tell you this, but  
18 the New York Giants are not recognized as a legitimate  
19 football team down in this part of the state.

01:55 20 MR. COLEMAN: I grew up in Mercer County, your Honor,  
21 I understand very well what, what the respective attitudes  
22 are. They're not considered legitimate up here either.

23 THE COURT: Touché.

24 You said that the Chief Justice accepted the  
01:55 25 distinctions in his opinion, but is that really what he did,



01:56 1 or is he really saying in his opinion that, yes, these are  
2 distinctions, and they were distinctions that were rationally  
3 made at the time by the respective states? Whether they're  
4 right or wrong, whether history has proved them right or  
5 wrong, isn't he making the point that they were rational at  
6 the time made by the state, and since he's applying the  
7 rational basis, that's all he needs to be concerned with?

01:56 8 MR. COLEMAN: To the extent that we can read him as  
9 saying that, your Honor, and I think it's a reasonable  
10 reading, I'm here to say that these regulations based on what  
11 I said just about two minutes ago, these regulations at this  
12 time, in this state, are not rational. They may have been --  
13 again, the Chief Justice was looking at a record based upon a  
14 snapshot of what California's regulations looked like by the  
01:56 15 time they got to him, and which had already been changed,  
16 which are still being litigated.

01:57 17 Now, New Jersey's regulations are not rational, and  
18 their irrationality, and again I'm not making a selective  
19 enforcement argument, but rather demonstrating that the  
01:57 20 conduct of the Governor at the protests tells us what he  
21 believes is rational. What he believes is rational is that  
22 for First Amendment purposes people can dispense with the  
23 strict requirements of social distancing, fend for themselves,  
24 get tested, that's rational, we can trust the Governor when he  
01:57 25 says that.

1 THE COURT: Mr. Feigenbaum, the State's response is  
2 what, sir? Your opportunity.

3 MR. FEIGENBAUM: Thank you, your Honor.

4 Two main points on this. One about the standard and  
01:57 5 one about the records.

6 So, regarding the standard, I think, your Honor, the  
7 Chief Justice's opinion is really best read to reflect what he  
8 thought was or wasn't consistent with the First Amendment.  
9 And that's because whether you're on a PI or whether you're on  
01:57 10 an abuse of discretion, appellate courts and certainly the  
11 Supreme Court are always reviewing specifically what they  
12 think of the law and the Constitutional question *de novo*. We  
13 saw that, for example, in the travel ban case where the  
14 Supreme Court itself was actually up on a PI in reaching that  
01:58 15 decision.

16 And then not that long ago, a District Court said, no,  
17 I have a different record in this case, wherein a different  
18 procedural posture all come out differently. And just last  
19 week the Fourth Circuit reversed that decision, saying that  
01:58 20 essentially when the Supreme Court actually reaches the legal  
21 issues, even on a different posture in an earlier stage of the  
22 case, clearly their legal disposition is what controls.

23 In the Chief Justice's opinion, and it's certainly  
24 unusual to see the Chief Justice write an opinion for only  
01:58 25 himself at that early stage in the case, is very clearly

1 telegraphing his view of the law and an explanation for why  
2 the majority of the Supreme Court allowed California's law to  
3 stand. I would also note the procedural posture is not that  
4 different. So the procedural posture at the Supreme Court was  
01:59 5 certainly about granting relief that the lower courts had  
6 denied, and that kind of mandatory relief the Chief Justice  
7 highlighted raises the burden.

8 But the Third Circuit has also made clear that, this  
9 would be the Acierno case that we cite in our brief at  
01:59 10 Page 653, that you're talking about not preservation of the  
11 status quo, but a mandatory injunction that would disrupt the  
12 status quo, that you are once again looking for heightened  
13 standards to be met because of the kind of burden that would  
14 lie from an injunction from a Federal Court changing the facts  
01:59 15 on the ground for a state during its reopening plan.

16 So, I think a combination of how the Chief Justice  
17 explained his opinion and the fact that the procedural posture  
18 really is not quite so different as plaintiffs' counsel  
19 suggests, really show that *South Bay* resolves this case, which  
01:59 20 is why, as your Honor has noted, every case after *South Bay*,  
21 notwithstanding the split that existed before *South Bay*, has  
22 come out the same way and has denied the kind of relief that's  
23 being sought in this case.

24 Briefly on the record, I understand that the facts on  
02:00 25 the ground in New Jersey today do not look exactly like the

02:00 1 facts on the ground in New Jersey, thank God, looked on  
2 April 15th. And I think we're all very, very pleased about  
3 that, and it's in large part because of the kinds of programs  
4 that were put in place in the face of developing information  
5 and uncertain science. Certainly things changed as time went  
6 on, but it was those sorts of efforts, each time rational in  
7 light of the facts on the ground, that helped bring New Jersey  
8 to where it is today.

02:00 9 If you look at the facts in California, California's  
10 situation has never been as bad as what New Jersey has had for  
11 months. California has had 5,000 deaths in a population of  
12 40 million. New Jersey has had 12,000 deaths in a population  
13 of 9 million. So to the degree that the argument is that  
14 community spread is lower in New Jersey now than it was a few  
15 months ago, and that distinguishes the Chief Justice's

02:00 16 opinion, it very much does not. Because the facts have always  
17 been more striking in New Jersey than they were across the  
18 state in California. And New Jersey has had to respond in  
19 kind, although it did of course significantly relax the

02:01 20 restrictions as our outbreak and community spread started to  
21 reduce. So, I think that that helps to explain why to the  
22 degree that the different records are relevant, it certainly  
23 doesn't help distinguish *South Bay* from this case, and in fact  
24 suggests that New Jersey really does have to take some  
02:01 25 stringent measures to protect its overall population.

1 We're also allowing widespread in any number religious  
2 worship to take place outdoors, as I've noted before in  
3 covering the equities. And that too would help emphasize why,  
4 just as *South Bay* suggested, we're actually doing a lot in  
02:01 5 New Jersey to protect robust avenues of religious worship to  
6 the greatest degree possible given the facts we have on the  
7 ground right now, and that the Chief Justice's opinion is very  
8 clear. Let the states do their level best in a rational way  
9 to protect religious worship while treating equally to  
02:01 10 everything else. Not treating it preferentially to the most  
11 analogous conduct, but treating it equally, or if it can as a  
12 policy matter, preferentially.

13 And that's what we've done indoors, where we've treated  
14 it equally to the most analogous activities, as the Chief  
02:02 15 Justice pointed to in *South Bay*, and treated it preferentially  
16 outdoors in a lower risk activity at a time of lower community  
17 spread. The State wants to accommodate worship how ever it  
18 can, but it cannot do so for high risk activities at this  
19 continued stage of community spread and at this continued  
02:02 20 stage of testing and tracing.

21 THE COURT: Mr. Coleman, I'll give you the last word.  
22 You are the plaintiff, you have the burden here.

23 MR. COLEMAN: Thank you. Thank you, your Honor.

24 Your Honor, I think Mr. Feigenbaum has been accurate  
02:02 25 and fair. I do understand that the Chief Justice does have an

02:03 1 inclination in his work to defer to the state, to defer to  
2 government action, and that is an important component of  
3 judicial restraint. But I would just note that New Jersey has  
4 a higher COVID death rate than California because -- largely  
5 because of New Jersey's policy with respect to nursing homes.  
6 And New Jersey's policy with respect to nursing homes has no  
7 small relation to State mandated decisions regarding COVID in  
8 nursing homes that were, turned out to be quite mistaken.

02:03 9 It is not unreasonable, and in fact the law counsels  
10 that we defer to the government, especially in times of  
11 emergency. But in many respects, government has made the  
12 wrong choices. Where there is a Constitutional prerogative,  
13 that deference has to be reconsidered. And we submit that the  
14 facts here and the circumstances and the timing are such that  
02:04 15 it is appropriate and not inconsistent at all with the Supreme  
16 Court's ruling or those of any other court that this Court is  
17 required to obey or to follow, to issue the injunction that  
18 we've requested. Thank you.

02:04 19 THE COURT: Thank you. I'm going to put my findings  
20 and decision on the record now, because I anticipate that  
21 there may be an appeal and I don't want to delay it any  
22 further by taking the time to write an opinion, because  
23 writing an opinion is somewhat labor intensive, and isn't  
24 going to change the outcome anyway.

02:04 25 The facts are really largely undisputed. We have the

02:05 1 certifications from the four pastors of the churches which set  
2 forth that which is going on in their churches, and that which  
3 they at the time thought they would require in order to  
4 successfully hold religious services. There's no dispute  
5 whatsoever that these are all sincerely held and long term  
6 religious beliefs.

02:05 7 As to the State, we have the executive orders, they say  
8 what they say. And we have the enforcement decisions by the  
9 Superintendent of the State Police, that's all in the record  
10 for everyone to see.

02:05 11 Under Rule 65, you both understand, both sides  
12 understand the four factors that I need to go through. One,  
13 the likelihood of success on the merits. Two, whether there's  
14 a showing of irreparable harm. Three, review the balance of  
15 the equities to make sure that the granting of an injunction  
16 would not result in greater harm to the non-moving party. And  
17 number four, the public interest favors the relief sought in  
18 this case.

02:06 19 I do find that this executive order is currently under  
20 challenge and the other executive orders are laws of general  
21 applicability that impose equal burdens on religious and  
22 non-religious activities. Thus, they are subject to rational  
23 review basis. I think it's important to understand that the  
24 latest iteration for indoor gatherings applies equally to  
02:06 25 religious and non-religious services and gatherings in this

1 case.

2           There's also been no evidence whatsoever of any  
3 anti-religious animus, I went through that at the beginning of  
4 the oral argument. The State never shut down the houses of  
02:06 5 worship. The State has always exempted people traveling to  
6 and from religious services. In this case the State has never  
7 had any limits on driving or drive-through services, unlike  
8 some other states have.

9           We now have, the trend clearly is opening more and more  
02:07 10 and permitting larger numbers to gather for religious  
11 services. We have unlimited outdoor services. They can use  
12 tents, tarps, things of that nature to protect the  
13 parishioners from the weather and the elements. Specifically  
14 permit the removing of face masks for religious reasons, which  
02:07 15 again I assume to be for communion or baptism and things of  
16 that nature.

17           So, when we turn now to rational basis of this, I think  
18 it's an easy case for the State. I understand the plaintiffs'  
19 dissatisfaction with some of the distinctions made and some of  
02:08 20 the decisions made by the State. Some of them in retrospect  
21 seem to make little sense, total demarcation of essential and  
22 nonessential indicate some bureaucrat who was not feeling the  
23 pain of everyone else because the bureaucrat's getting their  
24 guaranteed salary and benefits. That strikes people the wrong  
02:08 25 way, and I appreciate that. But it is rational. There was a



1 rational basis to make some of these distinctions.

2 Most retail stores remain closed. Essential stores,  
3 you know, food, pharmacy, things of that nature, I think the  
4 State has made a good case that these are rational decisions  
02:08 5 that were made at the time. That they were made despite the  
6 fact that they do impose burdens on an awful lot of people in  
7 this state.

8 So, I think when we look at factor number one, the  
9 likelihood of success on the merits, I think that favors the  
02:09 10 defendant, the State. I don't think the plaintiffs, the  
11 churches are going to win their argument that this is a  
12 violation of their First Amendment rights.

13 As to irreparable harm, I think the fact that at least  
14 three of these four plaintiffs can now operate precisely as  
02:09 15 they had wished to operate before the change made by the State  
16 on June 10th, and the fourth can probably operate much like it  
17 wanted to before the change made, it makes it difficult for  
18 them to show irreparable harm.

19 As to the balance of the equities, I think the State's  
02:09 20 argument is a good argument. We're here, whether we're doing  
21 it the right way or the wrong way, the State is trying to  
22 reduce the number of infections, the number of  
23 hospitalizations, the number of deaths that are coming from  
24 this unprecedented pandemic. To permit these religious  
02:10 25 services indoors to have a greater number of people attend

1 would implicate and make very difficult any contact tracing  
2 that the State would like to do in order to continue to attack  
3 this disease.

02:10 4 And again, they're making no distinction between indoor  
5 and outdoor, I mean between indoor retail and indoor religious  
6 services. You still can't go to the movies, you still can't  
7 go to sporting events, you can't go to entertainment  
8 complexes, you can't go to the malls, you can't go in most  
9 retail stores. In all, I think for a rational reason.

02:10 10 Whether I agree with it or not, the State has shown a rational  
11 basis for this. Is an injunction in the public interest?  
12 Well, yeah, I think a vindication of someone's First Amendment  
13 rights is clearly in the public interest in this matter.

02:11 14 I am very much influenced by the Chief Justice's  
15 concurrence in the *South Bay* case. I've heard the argument,  
16 and, Mr. Coleman, which has been a terrific argument, the  
17 Chief Justice makes maybe some certain assumptions, but I  
18 think he's talking about the rational basis that we have to  
19 defer to when the facts on the ground are constantly changing.

02:11 20 We, the judges, have no special expertise in these  
21 kinds of situations, and we're not answerable to the people  
22 because we're Article III judges, so we must defer to what the  
23 State is trying to do. And Mr. Coleman makes a point that  
24 time has passed, things are changing and perhaps the Chief  
02:12 25 Justice a month or two from now may have a different opinion.

1 These kinds of lockdowns continue despite the drop in the  
2 rates of infections, rates of death and rates of  
3 hospitalization. But at this point, I'm going to deny the  
4 application for the preliminary injunction for the plaintiffs.

02:12

5 Anything further? You'll both do an order.

6 MR. COLEMAN: We're good. Thank you, Judge.

7 THE COURT: Thank you, everybody. That was terrific.  
8 You're really on top of the game and --

9 MR. COLEMAN: Thank you.

02:12

10 THE COURT: -- it was really interesting. This is a  
11 really interesting case. I'm a big backer of free exercise  
12 clause and First Amendment, but I don't think the law at this  
13 point would permit me to grant an injunction.

14 MR. COLEMAN: Thank you, Judge.

02:13

15 THE COURT: Thank you very much, everybody.

16 MR. FEIGENBAUM: Thank you, your Honor.

17 MR. VANNELLA: Thank you.

18 (The matter was then concluded.)

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1 I certify that the foregoing is a correct transcript from the  
2 record of proceedings in the above-entitled matter.

3

4 /S/ Carl Nami, Official Court Reporter

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Court Reporter/Transcriber

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7 June 26, 2020

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<p>10:4, 12:13, 19:25, 23:14, 27:19, 30:25, 60:24, 67:15</p> <p><b>approvingly</b> [1] - 56:4</p> <p><b>April</b> [5] - 20:13, 26:18, 31:3, 61:13, 65:2</p> <p><b>area</b> [1] - 39:14</p> <p><b>argued</b> [1] - 28:9</p> <p><b>arguing</b> [2] - 56:22, 61:12</p> <p><b>argument</b> [18] - 9:12, 17:10, 21:8, 35:13, 40:3, 45:19, 51:23, 53:24, 61:4, 61:16, 62:19, 65:13, 69:4, 70:11, 70:20, 71:15, 71:16</p> <p><b>arguments</b> [5] - 9:7, 31:3, 35:16, 42:3, 50:13</p> <p><b>arisen</b> [1] - 27:15</p> <p><b>arrested</b> [2] - 25:21, 25:22</p> <p><b>arrows</b> [1] - 26:18</p> <p><b>Article</b> [2] - 54:10, 71:22</p> <p><b>as-applied</b> [2] - 13:6, 15:4</p> <p><b>Asbury</b> [2] - 22:20, 34:9</p> <p><b>aside</b> [1] - 38:23</p> <p><b>assault</b> [1] - 47:11</p> <p><b>assert</b> [1] - 20:19</p> <p><b>asserted</b> [1] - 45:21</p> <p><b>asserts</b> [1] - 38:3</p> <p><b>assess</b> [2] - 33:25, 34:12</p> <p><b>assessed</b> [1] - 37:17</p> <p><b>assessing</b> [1] - 37:16</p> <p><b>assign</b> [1] - 27:22</p> <p><b>assigning</b> [1] - 27:21</p> <p><b>assume</b> [4] - 18:21, 24:18, 31:24, 69:15</p> <p><b>assuming</b> [1] - 7:15</p> <p><b>assumptions</b> [2] - 59:19, 71:17</p> <p><b>asymptomatic</b> [1] - 40:12</p> <p><b>attack</b> [1] - 71:2</p> <p><b>attend</b> [5] - 9:10, 9:11, 11:10, 13:20, 70:25</p> <p><b>attendance</b> [2] - 10:18, 58:1</p> <p><b>attended</b> [1] - 54:7</p> <p><b>attending</b> [2] - 14:7, 25:1</p>	<p><b>attitude</b> [4] - 25:24, 25:25, 60:16, 60:21</p> <p><b>attitudes</b> [1] - 61:21</p> <p><b>Attorney</b> [4] - 2:23, 3:1, 25:16, 44:20</p> <p><b>ATTORNEY</b> [1] - 1:17</p> <p><b>audience</b> [1] - 32:6</p> <p><b>authority</b> [5] - 20:19, 20:20, 20:21, 29:14, 52:3</p> <p><b>authorized</b> [1] - 4:20</p> <p><b>authorizing</b> [1] - 53:21</p> <p><b>available</b> [3] - 8:8, 15:3</p> <p><b>avenues</b> [1] - 66:5</p> <p><b>avoid</b> [3] - 19:3, 19:6, 48:15</p> <p><b>avoided</b> [1] - 44:6</p> <p><b>award</b> [1] - 51:11</p> <p><b>aware</b> [2] - 7:4, 39:13</p> <p><b>awful</b> [1] - 70:6</p> <p><b>axis</b> [1] - 61:2</p>	<p>64:19, 64:20, 64:21, 65:23, 66:4, 66:15, 71:15</p> <p><b>BB</b> [1] - 38:19</p> <p><b>beaches</b> [2] - 14:23, 29:20</p> <p><b>bear</b> [1] - 41:8</p> <p><b>beautiful</b> [1] - 5:7</p> <p><b>became</b> [3] - 19:23, 20:10, 20:11</p> <p><b>BECKER</b> [1] - 1:15</p> <p><b>become</b> [2] - 12:10, 55:25</p> <p><b>becomes</b> [2] - 39:20, 42:25</p> <p><b>beer</b> [2] - 60:23, 60:25</p> <p><b>beforehand</b> [1] - 14:22</p> <p><b>begin</b> [2] - 18:4, 26:14</p> <p><b>begin [1]</b> - 32:17</p> <p><b>beginning</b> [3] - 10:17, 39:6, 69:3</p> <p><b>behalf</b> [2] - 2:24, 3:1</p> <p><b>behind</b> [1] - 40:7</p> <p><b>beliefs</b> [2] - 21:3, 68:6</p> <p><b>believes</b> [3] - 15:10, 62:21</p> <p><b>below</b> [2] - 53:3, 56:20</p> <p><b>bench</b> [1] - 25:7</p> <p><b>benefits</b> [2] - 46:18, 69:24</p> <p><b>best</b> [5] - 5:13, 32:25, 40:22, 63:7, 66:8</p> <p><b>better</b> [10] - 13:15, 13:16, 18:20, 23:16, 23:18, 23:23, 44:10, 57:21, 59:23, 60:24</p> <p><b>between</b> [10] - 12:17, 30:14, 36:10, 37:20, 38:3, 52:6, 54:3, 54:12, 71:4, 71:5</p> <p><b>beyond</b> [3] - 10:19, 13:13, 46:4</p> <p><b>bias</b> [5] - 24:8, 24:21, 24:22, 44:17, 45:11</p> <p><b>Bible</b> [1] - 36:2</p> <p><b>big</b> [9] - 11:13, 11:14, 14:13, 24:1, 26:23, 30:8, 30:14, 30:17, 72:11</p> <p><b>bigger</b> [3] - 7:9, 16:21, 16:23</p> <p><b>Bill</b> [1] - 16:17</p> <p><b>birthday</b> [1] - 45:3</p> <p><b>bit</b> [3] - 53:20, 55:1,</p>	<p>59:16</p> <p><b>Black</b> [2] - 42:4, 43:18</p> <p><b>blanket</b> [1] - 14:22</p> <p><b>Bledsoe</b> [3] - 5:11, 5:25, 6:10</p> <p><b>bleeding</b> [1] - 35:5</p> <p><b>bless</b> [1] - 53:2</p> <p><b>blew</b> [1] - 52:18</p> <p><b>BLM</b> [1] - 25:23</p> <p><b>block</b> [1] - 43:12</p> <p><b>blocks</b> [1] - 59:7</p> <p><b>blow</b> [1] - 52:18</p> <p><b>blue</b> [1] - 26:17</p> <p><b>board</b> [4] - 3:13, 19:8, 19:9, 21:16</p> <p><b>Bobby</b> [1] - 5:11</p> <p><b>body</b> [1] - 33:15</p> <p><b>book</b> [2] - 36:2, 39:25</p> <p><b>borrow</b> [1] - 33:5</p> <p><b>bound</b> [2] - 53:3, 57:14</p> <p><b>BOX</b> [1] - 1:19</p> <p><b>branch</b> [2] - 15:24, 34:25</p> <p><b>breath</b> [2] - 31:16, 31:22</p> <p><b>brief</b> [3] - 2:12, 42:23, 64:9</p> <p><b>briefed</b> [1] - 57:20</p> <p><b>briefing</b> [1] - 3:18</p> <p><b>briefly</b> [5] - 35:16, 35:21, 36:16, 46:7, 64:24</p> <p><b>briefs</b> [1] - 52:8</p> <p><b>bright</b> [1] - 61:12</p> <p><b>bright-line</b> [1] - 61:12</p> <p><b>bring</b> [3] - 37:22, 60:9, 65:7</p> <p><b>broad</b> [1] - 61:12</p> <p><b>broader</b> [2] - 42:5, 48:22</p> <p><b>brought</b> [1] - 4:2</p> <p><b>build</b> [2] - 43:10, 60:9</p> <p><b>building</b> [4] - 12:7, 12:8, 34:22, 42:13</p> <p><b>Building</b> [1] - 1:9</p> <p><b>bums</b> [2] - 15:18, 15:19</p> <p><b>burden</b> [4] - 50:19, 64:7, 64:13, 66:22</p> <p><b>burdens</b> [2] - 68:21, 70:6</p> <p><b>bureaucrat</b> [2] - 61:11, 69:22</p> <p><b>bureaucrat's</b> [1] - 69:23</p>	<p><b>burgeoning</b> [1] - 40:21</p> <p><b>businesses</b> [1] - 54:2</p> <p><b>buy</b> [1] - 14:10</p> <p><b>buying</b> [1] - 11:20</p> <p><b>BY</b> [2] - 1:15, 1:17</p>
<b>B</b>		<b>C</b>		
	<p><b>backer</b> [1] - 72:11</p> <p><b>backyard</b> [1] - 45:4</p> <p><b>bad</b> [1] - 65:10</p> <p><b>balance</b> [3] - 43:23, 68:14, 70:19</p> <p><b>ban</b> [1] - 63:13</p> <p><b>banished</b> [1] - 34:19</p> <p><b>bans</b> [1] - 47:10</p> <p><b>baptism</b> [1] - 69:15</p> <p><b>baptisms</b> [2] - 6:9, 24:18</p> <p><b>based</b> [16] - 12:14, 33:25, 34:12, 34:16, 36:12, 40:1, 40:2, 40:3, 41:6, 44:13, 48:6, 50:18, 57:11, 57:19, 62:10, 62:13</p> <p><b>basement</b> [1] - 37:8</p> <p><b>bases</b> [1] - 30:18</p> <p><b>basis</b> [25] - 6:20, 12:17, 28:3, 28:18, 28:20, 28:22, 29:12, 29:22, 29:23, 30:4, 31:5, 31:14, 37:15, 37:19, 38:17, 39:23, 45:13, 45:21, 56:25, 62:7, 68:23, 69:17, 70:1, 71:11, 71:18</p> <p><b>Bay</b> [20] - 35:5, 36:22, 38:12, 41:13, 48:14, 49:6, 49:7, 50:3, 55:6, 55:19, 55:22, 56:1, 56:4,</p>	<p><b>backer</b> [1] - 72:11</p> <p><b>backyard</b> [1] - 45:4</p> <p><b>bad</b> [1] - 65:10</p> <p><b>balance</b> [3] - 43:23, 68:14, 70:19</p> <p><b>ban</b> [1] - 63:13</p> <p><b>banished</b> [1] - 34:19</p> <p><b>bans</b> [1] - 47:10</p> <p><b>baptism</b> [1] - 69:15</p> <p><b>baptisms</b> [2] - 6:9, 24:18</p> <p><b>based</b> [16] - 12:14, 33:25, 34:12, 34:16, 36:12, 40:1, 40:2, 40:3, 41:6, 44:13, 48:6, 50:18, 57:11, 57:19, 62:10, 62:13</p> <p><b>basement</b> [1] - 37:8</p> <p><b>bases</b> [1] - 30:18</p> <p><b>basis</b> [25] - 6:20, 12:17, 28:3, 28:18, 28:20, 28:22, 29:12, 29:22, 29:23, 30:4, 31:5, 31:14, 37:15, 37:19, 38:17, 39:23, 45:13, 45:21, 56:25, 62:7, 68:23, 69:17, 70:1, 71:11, 71:18</p> <p><b>Bay</b> [20] - 35:5, 36:22, 38:12, 41:13, 48:14, 49:6, 49:7, 50:3, 55:6, 55:19, 55:22, 56:1, 56:4,</p>	<p><b>backer</b> [1] - 72:11</p> <p><b>backyard</b> [1] - 45:4</p> <p><b>bad</b> [1] - 65:10</p> <p><b>balance</b> [3] - 43:23, 68:14, 70:19</p> <p><b>ban</b> [1] - 63:13</p> <p><b>banished</b> [1] - 34:19</p> <p><b>bans</b> [1] - 47:10</p> <p><b>baptism</b> [1] - 69:15</p> <p><b>baptisms</b> [2] - 6:9, 24:18</p> <p><b>based</b> [16] - 12:14, 33:25, 34:12, 34:16, 36:12, 40:1, 40:2, 40:3, 41:6, 44:13, 48:6, 50:18, 57:11, 57:19, 62:10, 62:13</p> <p><b>basement</b> [1] - 37:8</p> <p><b>bases</b> [1] - 30:18</p> <p><b>basis</b> [25] - 6:20, 12:17, 28:3, 28:18, 28:20, 28:22, 29:12, 29:22, 29:23, 30:4, 31:5, 31:14, 37:15, 37:19, 38:17, 39:23, 45:13, 45:21, 56:25, 62:7, 68:23, 69:17, 70:1, 71:11, 71:18</p> <p><b>Bay</b> [20] - 35:5, 36:22, 38:12, 41:13, 48:14, 49:6, 49:7, 50:3, 55:6, 55:19, 55:22, 56:1, 56:4,</p>	<p><b>calendar</b> [1] - 9:4</p> <p><b>California</b> [7] - 30:1, 38:1, 55:10, 65:9, 65:11, 65:18, 67:4</p> <p><b>California's</b> [4] - 36:23, 62:14, 64:2, 65:9</p> <p><b>Camden</b> [4] - 1:10, 44:7, 44:8</p> <p><b>cannot</b> [3] - 27:4, 48:2, 66:18</p> <p><b>cap</b> [8] - 7:3, 10:19, 10:23, 10:24, 17:8, 31:13, 45:23, 54:14</p> <p><b>capacity</b> [9] - 6:2, 7:1, 17:9, 27:6, 36:12, 36:14, 39:22, 40:14, 41:6</p> <p><b>capped</b> [2] - 5:20, 6:20</p> <p><b>capture</b> [1] - 60:2</p> <p><b>care</b> [5] - 14:20, 19:3, 19:7, 20:7, 51:20</p> <p><b>career</b> [2] - 23:24, 25:9</p> <p><b>careful</b> [1] - 49:1</p> <p><b>Carl</b> [2] - 1:22, 73:4</p> <p><b>Carl's</b> [1] - 2:11</p> <p><b>Carl_Nam@NJD.USCOURTS.GOV</b> [1] - 1:23</p> <p><b>carrying</b> [1] - 39:8</p> <p><b>case</b> [37] - 3:22, 8:25, 24:3, 25:7, 25:13, 30:1, 30:2, 35:11, 42:22, 42:24, 43:4, 43:14, 48:17, 49:6, 49:7, 49:19, 50:3, 50:16, 50:23, 54:20, 57:2, 63:13, 63:17, 63:22, 63:25, 64:9, 64:19, 64:20, 64:23, 65:23, 68:18, 69:1, 69:6, 69:18, 70:4, 71:15, 72:11</p> <p><b>case's</b> [1] - 57:11</p> <p><b>cases</b> [7] - 13:21, 18:12, 51:6, 51:23, 53:3, 55:14, 56:3</p>

<p><b>casino</b> <sup>[1]</sup> - 46:2  <b>casual</b> <sup>[1]</sup> - 59:19  <b>catacombs</b> <sup>[1]</sup> - 30:15  <b>catch</b> <sup>[1]</sup> - 31:16  <b>categorical</b> <sup>[3]</sup> - 37:15, 37:16, 37:19  <b>category</b> <sup>[2]</sup> - 60:22, 60:23  <b>caught</b> <sup>[2]</sup> - 47:4, 47:11  <b>caused</b> <sup>[1]</sup> - 18:9  <b>causes</b> <sup>[1]</sup> - 28:2  <b>caution</b> <sup>[1]</sup> - 21:23  <b>cautious</b> <sup>[1]</sup> - 18:20  <b>CDC</b> <sup>[1]</sup> - 38:20  <b>celebrate</b> <sup>[1]</sup> - 7:14  <b>certain</b> <sup>[8]</sup> - 8:23, 25:24, 41:2, 41:16, 51:7, 59:25, 71:17  <b>certainly</b> <sup>[24]</sup> - 9:1, 22:12, 26:24, 30:22, 31:13, 32:24, 34:19, 37:14, 37:18, 39:10, 45:14, 48:10, 48:22, 54:21, 57:13, 57:14, 57:16, 58:7, 58:25, 63:10, 63:23, 64:5, 65:5, 65:22  <b>certification</b> <sup>[2]</sup> - 6:1, 10:12  <b>certifications</b> <sup>[3]</sup> - 5:4, 13:8, 68:1  <b>certify</b> <sup>[1]</sup> - 73:1  <b>cetera</b> <sup>[2]</sup> - 4:4, 4:5  <b>challenge</b> <sup>[10]</sup> - 13:5, 13:6, 15:4, 17:4, 17:5, 18:5, 18:6, 18:13, 21:6, 68:20  <b>challenges</b> <sup>[3]</sup> - 41:7, 48:20, 48:23  <b>chance</b> <sup>[1]</sup> - 31:16  <b>change</b> <sup>[10]</sup> - 4:11, 19:18, 21:18, 35:18, 46:8, 57:9, 57:10, 67:24, 70:15, 70:17  <b>changed</b> <sup>[5]</sup> - 8:11, 19:1, 21:20, 62:15, 65:5  <b>changes</b> <sup>[6]</sup> - 4:24, 33:14, 33:25, 34:12, 48:6, 48:8  <b>changing</b> <sup>[6]</sup> - 19:21, 20:15, 33:21, 64:14, 71:19, 71:24  <b>characterized</b> <sup>[1]</sup> - 50:7  <b>charged</b> <sup>[1]</sup> - 54:6  <b>charges</b> <sup>[1]</sup> - 44:19  <b>charging</b> <sup>[2]</sup> - 43:23,</p>	<p>44:2  <b>Chief</b> <sup>[37]</sup> - 15:17, 23:23, 28:7, 28:14, 28:15, 28:25, 30:24, 31:10, 32:9, 33:10, 35:22, 36:3, 36:24, 37:13, 37:17, 37:24, 38:11, 39:22, 48:13, 49:17, 50:2, 55:11, 59:18, 61:24, 62:13, 63:7, 63:23, 63:24, 64:6, 64:16, 65:15, 66:7, 66:14, 66:25, 71:14, 71:17, 71:24  <b>child</b> <sup>[1]</sup> - 37:7  <b>choice</b> <sup>[1]</sup> - 44:9  <b>choices</b> <sup>[1]</sup> - 67:12  <b>choir</b> <sup>[4]</sup> - 27:14, 30:7, 30:13, 36:2  <b>choirs</b> <sup>[3]</sup> - 12:3, 30:7  <b>chose</b> <sup>[5]</sup> - 7:2, 7:3, 18:8, 46:22  <b>church</b> <sup>[24]</sup> - 9:10, 10:18, 11:3, 12:3, 16:3, 16:5, 16:8, 21:10, 21:11, 26:12, 27:13, 27:14, 30:6, 30:12, 30:15, 30:19, 36:1, 37:9, 42:1, 46:22, 56:16, 56:18  <b>Church</b> <sup>[3]</sup> - 7:8, 10:15, 16:4  <b>churches</b> <sup>[15]</sup> - 3:24, 5:3, 12:5, 13:10, 13:20, 16:12, 25:10, 33:6, 33:8, 39:17, 61:1, 68:1, 68:2, 70:11  <b>Circuit</b> <sup>[6]</sup> - 30:2, 49:7, 49:22, 53:6, 63:19, 64:8  <b>circumstance</b> <sup>[1]</sup> - 8:9  <b>circumstances</b> <sup>[7]</sup> - 9:24, 10:4, 19:18, 20:15, 52:1, 52:12, 67:14  <b>cite</b> <sup>[2]</sup> - 42:23, 64:9  <b>cited</b> <sup>[5]</sup> - 51:23, 55:8, 55:10, 55:16, 56:3  <b>cities</b> <sup>[1]</sup> - 29:3  <b>citizens</b> <sup>[1]</sup> - 18:23  <b>CIVIL</b> <sup>[1]</sup> - 1:3  <b>clause</b> <sup>[1]</sup> - 72:12  <b>Clause</b> <sup>[1]</sup> - 8:18  <b>clear</b> <sup>[15]</sup> - 6:21, 10:1, 13:21, 17:12, 19:24, 20:6, 20:8,</p>	<p>20:10, 20:19, 22:22, 43:11, 49:21, 50:1, 64:8, 66:8  <b>clearly</b> <sup>[7]</sup> - 3:5, 24:19, 45:10, 63:22, 63:25, 69:9, 71:13  <b>Clerk</b> <sup>[1]</sup> - 2:10  <b>clients</b> <sup>[16]</sup> - 5:18, 6:15, 8:5, 8:22, 9:16, 17:21, 18:4, 18:8, 18:13, 19:10, 19:24, 22:10, 30:10, 41:22, 53:22, 60:4  <b>clients'</b> <sup>[4]</sup> - 9:7, 9:24, 17:17, 20:24  <b>closed</b> <sup>[8]</sup> - 24:12, 39:1, 39:4, 41:11, 56:9, 58:18, 70:2  <b>closing</b> <sup>[1]</sup> - 58:21  <b>closure</b> <sup>[1]</sup> - 49:9  <b>clothed</b> <sup>[1]</sup> - 23:14  <b>club</b> <sup>[2]</sup> - 36:2, 39:25  <b>Cohen</b> <sup>[1]</sup> - 1:9  <b>cohorts</b> <sup>[1]</sup> - 19:22  <b>COLEMAN</b> <sup>[54]</sup> - 1:15, 2:5, 2:15, 2:19, 3:19, 5:9, 5:12, 6:3, 6:7, 6:12, 6:23, 7:10, 7:16, 7:18, 7:24, 8:2, 8:14, 8:21, 10:12, 10:15, 11:5, 15:20, 16:7, 16:13, 17:24, 18:15, 21:25, 22:3, 24:24, 28:15, 28:22, 30:11, 30:13, 31:17, 31:20, 31:24, 32:3, 32:5, 49:11, 50:6, 53:5, 53:8, 53:14, 54:10, 55:24, 56:11, 58:2, 58:7, 61:20, 62:8, 66:23, 72:6, 72:9, 72:14  <b>Coleman</b> <sup>[14]</sup> - 2:19, 30:9, 31:15, 34:9, 36:4, 38:2, 41:15, 49:6, 54:8, 59:11, 61:17, 66:21, 71:16, 71:23  <b>Coleman's</b> <sup>[3]</sup> - 36:17, 41:22, 42:3  <b>collect</b> <sup>[1]</sup> - 40:5  <b>collection</b> <sup>[1]</sup> - 44:19  <b>collectively</b> <sup>[2]</sup> - 3:22, 3:23  <b>colloquy</b> <sup>[1]</sup> - 39:13  <b>combination</b> <sup>[3]</sup> - 20:14, 51:8, 64:16  <b>comfortable</b> <sup>[1]</sup> - 17:1  <b>coming</b> <sup>[5]</sup> - 4:25,</p>	<p>29:2, 30:19, 37:7, 70:23  <b>comments</b> <sup>[3]</sup> - 16:17, 20:16, 32:11  <b>committed</b> <sup>[1]</sup> - 48:11  <b>communion</b> <sup>[3]</sup> - 6:9, 24:18, 69:15  <b>community</b> <sup>[7]</sup> - 37:23, 38:13, 44:2, 65:14, 65:20, 66:16, 66:19  <b>Community</b> <sup>[1]</sup> - 7:8  <b>compare</b> <sup>[1]</sup> - 27:19  <b>compared</b> <sup>[2]</sup> - 38:9, 52:15  <b>compelling</b> <sup>[1]</sup> - 56:1  <b>complain</b> <sup>[1]</sup> - 16:9  <b>complete</b> <sup>[1]</sup> - 31:10  <b>completely</b> <sup>[1]</sup> - 17:22  <b>complexes</b> <sup>[1]</sup> - 71:8  <b>compliance</b> <sup>[1]</sup> - 6:17  <b>complies</b> <sup>[1]</sup> - 46:11  <b>comply</b> <sup>[3]</sup> - 7:25, 8:5, 8:16  <b>complying</b> <sup>[1]</sup> - 5:18  <b>component</b> <sup>[1]</sup> - 67:2  <b>computer</b> <sup>[1]</sup> - 1:25  <b>computer-aided</b> <sup>[1]</sup> - 1:25  <b>Con</b> <sup>[1]</sup> - 22:6  <b>concept</b> <sup>[1]</sup> - 60:2  <b>concern</b> <sup>[1]</sup> - 55:4  <b>concerned</b> <sup>[1]</sup> - 62:7  <b>concerning</b> <sup>[4]</sup> - 11:25, 25:4, 27:6  <b>concerns</b> <sup>[3]</sup> - 25:2, 44:4, 53:14  <b>concert</b> <sup>[2]</sup> - 39:24, 45:4  <b>conclude</b> <sup>[3]</sup> - 37:2, 37:18, 41:10  <b>concluded</b> <sup>[2]</sup> - 47:21, 72:18  <b>concurrency</b> <sup>[2]</sup> - 49:17, 71:15  <b>concurring</b> <sup>[3]</sup> - 32:9, 55:11, 55:16  <b>conduct</b> <sup>[22]</sup> - 10:25, 12:14, 14:4, 15:6, 16:16, 16:18, 23:13, 23:15, 27:6, 28:24, 43:2, 44:12, 45:13, 45:14, 47:18, 47:20, 51:21, 62:20, 66:11  <b>conducts</b> <sup>[1]</sup> - 23:19  <b>conference</b> <sup>[1]</sup> - 48:5</p>	<p><b>congregate</b> <sup>[3]</sup> - 20:11, 41:5, 41:25  <b>congregation</b> <sup>[2]</sup> - 12:20, 60:10  <b>congregational</b> <sup>[1]</sup> - 52:2  <b>congregations</b> <sup>[4]</sup> - 8:25, 13:7, 13:8, 13:25  <b>connection</b> <sup>[1]</sup> - 25:22  <b>consensus</b> <sup>[1]</sup> - 18:16  <b>consequence</b> <sup>[1]</sup> - 46:25  <b>consequences</b> <sup>[7]</sup> - 46:13, 46:14, 46:16, 47:6, 47:7, 47:12, 47:14  <b>conservative</b> <sup>[1]</sup> - 5:14  <b>consider</b> <sup>[7]</sup> - 10:12, 11:7, 21:1, 50:12, 51:25, 60:11, 61:7  <b>considerable</b> <sup>[1]</sup> - 19:20  <b>considerably</b> <sup>[2]</sup> - 14:8, 38:18  <b>consideration</b> <sup>[1]</sup> - 47:25  <b>considerations</b> <sup>[2]</sup> - 18:24, 56:19  <b>considered</b> <sup>[1]</sup> - 61:22  <b>considering</b> <sup>[1]</sup> - 6:12  <b>considers</b> <sup>[2]</sup> - 29:7, 29:8  <b>consistent</b> <sup>[3]</sup> - 23:24, 30:23, 63:8  <b>constantly</b> <sup>[1]</sup> - 71:19  <b>constituting</b> <sup>[2]</sup> - 58:10, 58:11  <b>Constitution</b> <sup>[3]</sup> - 16:22, 17:19, 22:7  <b>Constitutional</b> <sup>[7]</sup> - 26:3, 27:22, 31:8, 47:9, 56:15, 63:12, 67:12  <b>Constitutionally</b> <sup>[5]</sup> - 28:1, 28:4, 51:21, 58:12, 61:15  <b>contact</b> <sup>[18]</sup> - 6:15, 33:3, 34:2, 36:25, 37:2, 40:7, 40:8, 40:17, 40:21, 40:25, 41:7, 42:13, 47:23, 54:16, 54:21, 54:23, 54:25, 71:1</p>
--	---	--	--	--



<p><b>contemplated</b> [1] - 38:11</p> <p><b>contemplating</b> [1] - 54:13</p> <p><b>context</b> [10] - 34:7, 41:8, 42:4, 43:25, 44:9, 47:16, 55:9, 55:15, 57:3</p> <p><b>contexts</b> [2] - 36:4, 57:4</p> <p><b>continue</b> [7] - 13:19, 20:2, 34:5, 34:13, 45:15, 71:2, 72:1</p> <p><b>continued</b> [3] - 4:22, 66:19</p> <p><b>continues</b> [2] - 4:16, 32:18</p> <p><b>continuing</b> [3] - 4:21, 34:21, 48:12</p> <p><b>contours</b> [1] - 35:7</p> <p><b>contrast</b> [2] - 36:10, 36:24</p> <p><b>control</b> [2] - 28:3, 33:16</p> <p><b>controls</b> [1] - 63:22</p> <p><b>conversation</b> [3] - 25:9, 34:25, 54:11</p> <p><b>conversations</b> [1] - 3:8</p> <p><b>Cooper</b> [1] - 1:9</p> <p><b>core</b> [1] - 33:10</p> <p><b>Cornerstone</b> [1] - 7:8</p> <p><b>Corona</b> [1] - 31:21</p> <p><b>correct</b> [6] - 4:25, 5:1, 8:1, 24:23, 28:19, 73:1</p> <p><b>correctly</b> [1] - 37:17</p> <p><b>coughs</b> [1] - 39:9</p> <p><b>counsel</b> [4] - 2:18, 39:14, 50:14, 64:18</p> <p><b>counsels</b> [1] - 67:9</p> <p><b>countries</b> [1] - 40:24</p> <p><b>country</b> [5] - 16:20, 34:18, 34:20, 42:15, 44:5</p> <p><b>County</b> [1] - 61:20</p> <p><b>couple</b> [10] - 11:16, 11:25, 31:21, 33:9, 33:18, 34:15, 36:4, 40:25, 53:14, 53:19</p> <p><b>course</b> [7] - 20:17, 21:17, 21:20, 37:5, 37:10, 52:19, 65:19</p> <p><b>COURT</b> [63] - 1:1, 2:3, 2:7, 2:10, 2:13, 2:17, 2:21, 3:2, 3:20, 4:23, 5:2, 5:10, 5:25, 6:5, 6:8, 6:22, 7:5, 7:11, 7:17, 7:22, 7:25,</p>	<p>8:12, 8:15, 10:6, 10:14, 10:21, 15:14, 15:21, 16:8, 17:16, 18:2, 21:14, 22:1, 23:22, 28:7, 28:16, 30:9, 30:12, 31:15, 31:18, 31:23, 32:1, 32:4, 32:6, 35:8, 49:5, 49:12, 52:21, 53:7, 53:12, 54:8, 55:6, 56:8, 57:22, 58:3, 61:17, 61:23, 63:1, 66:21, 67:19, 72:7, 72:10, 72:15</p> <p><b>Court</b> [71] - 1:22, 2:2, 9:2, 9:9, 10:6, 10:10, 12:13, 13:11, 14:16, 15:5, 16:13, 16:16, 17:25, 21:7, 21:22, 22:3, 22:4, 22:23, 23:3, 23:19, 25:18, 29:18, 30:14, 31:5, 31:6, 36:23, 44:22, 44:24, 44:25, 48:19, 48:21, 48:24, 49:10, 49:15, 49:20, 50:1, 50:8, 50:20, 50:24, 50:25, 51:1, 51:10, 51:14, 51:16, 52:3, 52:16, 52:18, 52:22, 53:1, 53:2, 55:5, 55:9, 55:23, 57:1, 57:14, 57:15, 57:18, 59:18, 60:7, 63:11, 63:14, 63:16, 63:20, 64:2, 64:4, 64:14, 67:16, 73:4, 73:5</p> <p><b>court</b> [14] - 2:11, 23:7, 50:10, 50:11, 50:12, 50:16, 50:23, 51:12, 51:13, 52:10, 52:15, 55:19, 67:16</p> <p><b>Court's</b> [4] - 9:25, 30:22, 59:24, 67:16</p> <p><b>Courthouse</b> [1] - 1:9</p> <p><b>courtroom</b> [2] - 3:5, 34:24</p> <p><b>courts</b> [12] - 23:11, 48:23, 49:8, 49:14, 49:22, 51:14, 51:24, 55:7, 56:20, 57:4, 63:10, 64:5</p> <p><b>Courts</b> [4] - 20:22, 22:9, 55:10, 57:17</p> <p><b>cover</b> [1] - 54:4</p> <p><b>covering</b> [1] - 66:3</p> <p><b>coverings</b> [1] - 4:5</p> <p><b>covers</b> [1] - 35:23</p> <p><b>COVID</b> [10] - 12:2, 19:5, 26:14, 29:4,</p>	<p>34:1, 42:20, 43:19, 57:13, 67:4, 67:7</p> <p><b>COVID-19</b> [15] - 33:2, 33:16, 33:18, 34:3, 34:20, 36:8, 37:16, 38:19, 39:2, 40:10, 40:12, 40:23, 41:9, 42:15, 44:11</p> <p><b>crafting</b> [1] - 59:23</p> <p><b>crime</b> [1] - 54:6</p> <p><b>crisis</b> [2] - 20:7, 44:21</p> <p><b>criteria</b> [3] - 9:14, 12:23, 60:25</p> <p><b>criterion</b> [4] - 60:2, 60:12, 60:14, 61:8</p> <p><b>critical</b> [1] - 47:25</p> <p><b>critically</b> [1] - 40:6</p> <p><b>crossed</b> [5] - 22:11, 22:12, 22:25, 29:19</p> <p><b>cry</b> [2] - 48:9, 48:10</p> <p><b>curbside</b> [1] - 56:10</p> <p><b>current</b> [1] - 4:6</p> <p><b>customers</b> [1] - 56:9</p> <p><b>cut</b> [1] - 52:8</p>	<p>63:19, 67:20</p> <p><b>decisions</b> [10] - 24:2, 24:8, 29:9, 43:23, 55:16, 57:17, 67:7, 68:8, 69:20, 70:4</p> <p><b>decline</b> [1] - 4:16</p> <p><b>declined</b> [1] - 49:16</p> <p><b>defendant</b> [3] - 12:15, 15:6, 70:10</p> <p><b>Defendants</b> [1] - 1:8</p> <p><b>DEFENDANTS</b> [1] - 1:20</p> <p><b>defendants</b> [7] - 2:21, 2:24, 3:1, 3:22, 12:15, 17:13, 51:5</p> <p><b>defer</b> [8] - 22:4, 22:15, 51:12, 67:1, 67:10, 71:19, 71:22</p> <p><b>deference</b> [3] - 51:22, 52:22, 67:13</p> <p><b>degree</b> [13] - 35:4, 35:5, 35:19, 40:22, 41:4, 42:3, 47:17, 48:16, 51:22, 65:13, 65:22, 66:6</p> <p><b>delay</b> [3] - 18:9, 48:17, 67:21</p> <p><b>demarcation</b> [1] - 69:21</p> <p><b>democracy</b> [2] - 12:23, 13:16</p> <p><b>democratic</b> [1] - 15:24</p> <p><b>demonstrate</b> [4] - 12:25, 43:19, 45:10, 45:12</p> <p><b>demonstrated</b> [3] - 14:3, 14:5, 22:13</p> <p><b>demonstrates</b> [2] - 15:7, 32:22</p> <p><b>demonstrating</b> [1] - 62:19</p> <p><b>demonstration</b> [3] - 11:20, 14:8, 25:1</p> <p><b>demonstrations</b> [8] - 14:23, 14:24, 17:12, 25:23, 28:25, 29:3, 29:20, 54:23</p> <p><b>denial</b> [1] - 55:20</p> <p><b>denied</b> [3] - 51:1, 64:6, 64:22</p> <p><b>deny</b> [1] - 72:3</p> <p><b>denying</b> [2] - 55:12, 55:17</p> <p><b>depart</b> [1] - 22:20</p> <p><b>Department</b> [2] - 13:1, 25:16</p> <p><b>Depot</b> [9] - 9:11, 26:6, 26:8, 26:16, 28:9, 36:9, 36:20,</p>	<p>36:25, 37:10</p> <p><b>Deputy</b> [1] - 2:10</p> <p><b>described</b> [1] - 51:3</p> <p><b>design</b> [1] - 28:13</p> <p><b>designed</b> [1] - 37:21</p> <p><b>despite</b> [4] - 12:1, 43:19, 70:5, 72:1</p> <p><b>destroying</b> [1] - 39:8</p> <p><b>detente</b> [1] - 22:21</p> <p><b>developing</b> [3] - 33:1, 33:15, 65:4</p> <p><b>diagnosed</b> [1] - 40:9</p> <p><b>die</b> [2] - 56:11, 60:18</p> <p><b>difference</b> [5] - 7:5, 24:1, 30:8, 30:14, 52:6</p> <p><b>different</b> [21] - 19:21, 26:11, 30:18, 30:21, 37:2, 47:20, 50:3, 50:7, 50:8, 52:4, 52:13, 52:14, 52:19, 63:17, 63:21, 64:4, 64:18, 65:22, 71:25</p> <p><b>differently</b> [1] - 63:18</p> <p><b>difficult</b> [5] - 3:8, 8:19, 50:19, 70:17, 71:1</p> <p><b>difficulty</b> [1] - 10:6</p> <p><b>dig</b> [1] - 25:13</p> <p><b>diminishing</b> [1] - 17:18</p> <p><b>dining</b> [1] - 34:9</p> <p><b>direct</b> [2] - 36:24, 49:12</p> <p><b>directly</b> [3] - 35:25, 36:22, 46:25</p> <p><b>disagree</b> [2] - 42:1, 45:16</p> <p><b>disagreement</b> [1] - 21:15</p> <p><b>discretion</b> [5] - 31:10, 44:14, 50:18, 50:21, 63:10</p> <p><b>discretionary</b> [1] - 50:22</p> <p><b>discriminates</b> [1] - 38:6</p> <p><b>discriminatory</b> [1] - 9:13</p> <p><b>discuss</b> [1] - 36:16</p> <p><b>discussing</b> [1] - 47:13</p> <p><b>discussion</b> [6] - 9:10, 19:11, 32:8, 32:13, 33:7, 35:5</p> <p><b>disease</b> [4] - 12:2, 13:2, 25:2, 71:3</p> <p><b>disfavored</b> [1] - 42:21</p>
		<b>D</b>		
		<p><b>DAG</b> [2] - 1:17, 1:18</p> <p><b>daily</b> [1] - 44:21</p> <p><b>dangerous</b> [5] - 47:21, 56:16, 57:24, 58:5, 59:17</p> <p><b>Daniel</b> [1] - 2:22</p> <p><b>DANIEL</b> [1] - 1:17</p> <p><b>data</b> [6] - 4:14, 4:22, 34:12, 34:22, 40:5, 48:6</p> <p><b>date</b> [4] - 4:10, 4:18, 32:20, 48:3</p> <p><b>days</b> [1] - 25:9</p> <p><b>de</b> [1] - 63:12</p> <p><b>deal</b> [4] - 12:7, 23:6, 28:8, 51:16</p> <p><b>death</b> [2] - 67:4, 72:2</p> <p><b>deaths</b> [4] - 20:8, 65:11, 65:12, 70:23</p> <p><b>debating</b> [1] - 21:9</p> <p><b>decided</b> [4] - 12:11, 13:22, 22:20, 38:1</p> <p><b>deciding</b> [2] - 13:20, 37:8</p> <p><b>decision</b> [24] - 8:20, 14:4, 14:21, 23:15, 26:10, 28:1, 28:19, 28:20, 30:4, 35:7, 35:14, 36:18, 37:24, 50:11, 50:18, 55:7, 55:11, 57:2, 57:15, 57:19, 57:23, 63:15,</p>		



<p><b>disparate</b> [2] - 25:20  <b>dispense</b> [1] - 62:22  <b>displays</b> [1] - 43:7  <b>disposition</b> [2] - 35:10, 63:22  <b>dispositive</b> [1] - 57:18  <b>dispute</b> [2] - 20:24, 68:4  <b>disrupt</b> [1] - 64:11  <b>dissatisfaction</b> [1] - 69:19  <b>distancing</b> [13] - 5:15, 5:23, 11:11, 15:11, 25:23, 27:17, 38:24, 41:3, 53:25, 54:1, 54:4, 56:18, 62:23  <b>distinction</b> [9] - 9:15, 11:12, 12:14, 38:2, 38:3, 38:6, 38:16, 58:24, 71:4  <b>distinctions</b> [7] - 9:12, 24:5, 61:25, 62:2, 69:19, 70:1  <b>distinctly</b> [1] - 3:5  <b>distinguish</b> [3] - 55:14, 55:19, 65:23  <b>distinguishes</b> [1] - 65:15  <b>distinguishing</b> [1] - 12:17  <b>District</b> [8] - 49:22, 50:25, 52:23, 55:9, 55:10, 57:17, 63:16  <b>DISTRICT</b> [3] - 1:1, 1:1, 1:12  <b>district</b> [2] - 52:17, 57:7  <b>disturbed</b> [1] - 56:21  <b>Division</b> [2] - 18:7, 21:10  <b>Docket</b> [2] - 38:20, 44:18  <b>doctors</b> [1] - 21:21  <b>done</b> [3] - 37:25, 57:6, 66:13  <b>doubling</b> [1] - 20:16  <b>doubt</b> [1] - 55:22  <b>down</b> [7] - 16:11, 20:16, 28:11, 28:12, 55:7, 61:19, 69:4  <b>draw</b> [2] - 22:9, 29:18  <b>drinking</b> [1] - 45:7  <b>drive</b> [3] - 24:11, 33:22, 69:7  <b>drive-in</b> [1] - 33:22  <b>drive-through</b> [2] - 24:11, 69:7</p>	<p><b>driving</b> [1] - 69:7  <b>drop</b> [1] - 72:1  <b>due</b> [1] - 8:21  <b>duration</b> [1] - 56:17  <b>during</b> [7] - 19:13, 20:16, 20:18, 21:17, 21:20, 37:14, 64:15  <b>Dwelling</b> [5] - 5:10, 5:13, 5:25, 6:20, 6:24  <b>DWELLING</b> [1] - 1:3</p> <p style="text-align: center;"><b>E</b></p> <p><b>e-mail</b> [1] - 25:8  <b>e-mails</b> [1] - 25:13  <b>early</b> [1] - 63:25  <b>easily</b> [2] - 7:17, 16:5  <b>easy</b> [1] - 69:18  <b>effect</b> [2] - 9:23, 56:20  <b>effort</b> [1] - 60:9  <b>efforts</b> [3] - 32:24, 38:11, 65:6  <b>egress</b> [1] - 61:9  <b>either</b> [4] - 2:9, 5:19, 6:17, 61:22  <b>elected</b> [3] - 15:10, 33:12, 48:14  <b>election</b> [1] - 15:18  <b>electoral</b> [1] - 15:16  <b>elements</b> [2] - 11:4, 69:13  <b>elsewhere</b> [3] - 34:17, 42:15, 48:16  <b>embarrass</b> [1] - 16:25  <b>emergency</b> [6] - 12:24, 13:13, 32:18, 34:19, 37:14, 67:11  <b>emphasize</b> [1] - 66:3  <b>employees</b> [1] - 11:3  <b>enacted</b> [2] - 26:25, 27:19  <b>encourage</b> [2] - 3:14, 32:1  <b>end</b> [2] - 8:23, 43:14  <b>endeavor</b> [1] - 52:19  <b>ending</b> [1] - 16:18  <b>enforcement</b> [21] - 36:18, 42:18, 42:23, 42:25, 43:20, 43:22, 44:1, 44:2, 44:8, 44:9, 44:13, 44:18, 44:25, 45:12, 45:17, 45:21, 46:4, 53:24, 60:17, 62:19, 68:8  <b>enforcement's</b> [1] - 44:1  <b>enforcing</b> [1] - 17:19</p>	<p><b>engage</b> [3] - 47:18, 47:19, 53:24  <b>engagement</b> [1] - 45:3  <b>engaging</b> [3] - 34:25, 41:25, 42:19  <b>enjoin</b> [1] - 55:12  <b>enormous</b> [1] - 21:16  <b>enter</b> [1] - 49:16  <b>entered</b> [3] - 18:7, 49:25, 51:24  <b>entertain</b> [1] - 55:4  <b>entertainment</b> [1] - 71:7  <b>entire</b> [2] - 30:16, 31:7  <b>entirely</b> [6] - 12:12, 26:10, 27:18, 30:23, 45:1, 59:15  <b>entirety</b> [1] - 16:11  <b>entitled</b> [9] - 13:25, 14:3, 14:24, 23:2, 23:17, 23:19, 25:18, 48:15, 73:2  <b>entitles</b> [1] - 8:18  <b>EOs</b> [2] - 41:13, 41:14  <b>equal</b> [3] - 13:24, 36:2, 68:21  <b>equally</b> [5] - 54:21, 66:9, 66:11, 66:14, 68:24  <b>equitable</b> [1] - 35:16  <b>equities</b> [5] - 35:19, 47:24, 66:3, 68:15, 70:19  <b>Eruv</b> [1] - 43:10  <b>especially</b> [8] - 13:14, 23:3, 32:21, 37:14, 37:20, 43:16, 60:18, 67:10  <b>ESQUIRE</b> [1] - 1:15  <b>essential</b> [2] - 69:21, 70:2  <b>essentially</b> [13] - 10:7, 11:21, 12:11, 27:11, 33:21, 35:11, 36:6, 41:5, 44:23, 45:20, 49:1, 56:7, 63:20  <b>establish</b> [1] - 3:9  <b>ET</b> [2] - 1:3, 1:7  <b>et</b> [2] - 4:4  <b>evaluate</b> [1] - 4:14  <b>evaluating</b> [1] - 4:17  <b>event</b> [4] - 19:7, 45:5, 53:25, 54:7  <b>events</b> [4] - 40:13, 54:25, 58:1, 71:7</p>	<p><b>evidence</b> [6] - 12:18, 24:3, 24:7, 24:20, 26:13, 69:2  <b>evident</b> [1] - 51:23  <b>evidentiary</b> [2] - 50:15  <b>exact</b> [3] - 34:15, 48:3  <b>exactly</b> [5] - 32:8, 37:25, 47:1, 47:16, 64:25  <b>example</b> [3] - 11:9, 46:19, 63:13  <b>examples</b> [3] - 36:8, 40:15, 44:25  <b>except</b> [2] - 6:19, 11:7  <b>executive</b> [14] - 4:7, 18:3, 18:5, 18:6, 18:13, 18:14, 23:21, 35:25, 38:17, 44:20, 48:21, 68:7, 68:19, 68:20  <b>Executive</b> [7] - 4:3, 4:14, 35:18, 41:18, 41:22, 42:9, 47:19  <b>exempted</b> [2] - 24:10, 69:5  <b>exemptions</b> [1] - 24:11  <b>Exercise</b> [1] - 8:18  <b>exercise</b> [7] - 14:17, 21:23, 25:4, 25:25, 26:1, 31:12, 72:11  <b>exercised</b> [1] - 14:18  <b>Exhibit</b> [2] - 38:19, 44:19  <b>exhibiting</b> [1] - 19:25  <b>existed</b> [2] - 8:6, 64:21  <b>exists</b> [1] - 12:5  <b>expand</b> [1] - 35:2  <b>expanding</b> [1] - 33:3  <b>expect</b> [5] - 6:13, 22:2, 25:12, 25:13, 57:1  <b>experience</b> [4] - 3:7, 30:21, 31:21, 52:24  <b>experienced</b> [1] - 52:5  <b>experiences</b> [1] - 56:17  <b>experiments</b> [1] - 33:16  <b>expertise</b> [2] - 21:24, 71:20  <b>explain</b> [4] - 11:12, 37:23, 57:14, 65:21  <b>explained</b> [3] - 35:23, 36:24, 64:17</p>	<p><b>explanation</b> [3] - 11:13, 16:18, 64:1  <b>exposed</b> [1] - 40:23  <b>extent</b> [8] - 6:19, 8:24, 14:2, 18:17, 50:21, 51:2, 58:22, 62:8  <b>extraordinary</b> [4] - 51:4, 51:6, 51:11, 56:25  <b>extreme</b> [2] - 19:7, 21:23  <b>extremely</b> [1] - 25:7</p> <p style="text-align: center;"><b>F</b></p> <p><b>face</b> [11] - 4:5, 24:17, 33:1, 33:14, 35:21, 41:13, 41:14, 54:4, 65:4, 69:14  <b>faces</b> [1] - 54:18  <b>facial</b> [1] - 13:5  <b>facially</b> [2] - 43:1, 43:4  <b>facie</b> [2] - 9:12, 13:22  <b>facilities</b> [3] - 12:6, 19:7, 58:25  <b>facility</b> [1] - 54:15  <b>facing</b> [1] - 45:24  <b>fact</b> [27] - 8:22, 9:8, 11:17, 11:22, 12:1, 13:6, 16:24, 22:25, 26:21, 35:25, 38:8, 38:12, 38:25, 41:19, 48:17, 51:7, 53:3, 55:15, 58:17, 59:16, 59:21, 64:17, 65:23, 67:9, 70:6, 70:13  <b>factor</b> [1] - 70:8  <b>factors</b> [7] - 24:22, 27:12, 27:13, 34:4, 50:4, 51:8, 68:12  <b>facts</b> [22] - 3:21, 17:25, 18:18, 19:1, 19:23, 20:10, 23:4, 31:3, 32:11, 33:13, 55:25, 64:14, 64:24, 65:1, 65:7, 65:9, 65:16, 66:6, 67:14, 67:25, 71:19  <b>factual</b> [3] - 28:6, 50:13, 57:3  <b>fail</b> [1] - 27:22  <b>failed</b> [1] - 12:25  <b>failure</b> [1] - 25:22  <b>fair</b> [2] - 34:18, 66:25  <b>family</b> [1] - 46:24  <b>fantastic</b> [1] - 60:12  <b>far</b> [6] - 26:22, 45:21, 48:9, 48:10, 59:9</p>
--	--	--	---	--

<p><b>FARM</b> [1] - 1:15  <b>fast</b> [1] - 60:2  <b>fault</b> [1] - 29:5  <b>favorable</b> [1] - 24:19  <b>favors</b> [2] - 68:17, 70:9  <b>fears</b> [1] - 17:17  <b>feature</b> [1] - 53:25  <b>February</b> [1] - 26:24  <b>federal</b> [1] - 23:25  <b>Federal</b> [7] - 9:9, 13:11, 20:22, 35:1, 48:24, 54:2, 64:14  <b>feet</b> [5] - 30:19, 39:2, 39:4, 54:3, 61:6  <b>Feigenbaum</b> [4] - 2:25, 53:15, 63:1, 66:24  <b>FEIGENBAUM</b> [10] - 1:18, 2:6, 2:9, 2:25, 4:9, 5:1, 32:15, 35:9, 63:3, 72:16  <b>Feigenbaum's</b> [1] - 54:19  <b>fell</b> [1] - 26:9  <b>fellowship</b> [1] - 37:22  <b>fend</b> [1] - 62:23  <b>few</b> [5] - 21:20, 35:3, 47:3, 48:18, 65:14  <b>fewer</b> [1] - 5:21  <b>fifty</b> [1] - 48:9  <b>figure</b> [3] - 3:16, 21:21, 33:2  <b>figures</b> [1] - 23:7  <b>file</b> [1] - 48:18  <b>filed</b> [2] - 22:12, 48:23  <b>final</b> [1] - 47:24  <b>findings</b> [4] - 50:15, 53:3, 56:20, 67:19  <b>fine</b> [3] - 3:15, 54:20, 57:22  <b>finer</b> [3] - 44:15, 47:3, 48:19  <b>firearms</b> [1] - 47:14  <b>first</b> [7] - 18:23, 19:1, 20:13, 21:6, 24:10, 26:8, 35:11  <b>First</b> [35] - 8:18, 11:15, 13:3, 13:14, 13:22, 14:18, 14:19, 16:23, 17:3, 17:5, 17:18, 17:21, 20:2, 20:22, 21:12, 22:5, 22:7, 25:1, 25:4, 25:25, 26:1, 26:3, 31:11, 32:14, 58:14, 58:16, 58:17, 58:20, 60:21, 60:24, 62:22,</p>	<p>63:8, 70:12, 71:12, 72:12  <b>fit</b> [6] - 12:21, 13:9, 15:25, 16:25, 17:14, 50:14  <b>five</b> [4] - 37:6, 49:16, 55:16, 55:23  <b>fixed</b> [1] - 36:13  <b>fleeting</b> [1] - 37:20  <b>flexibility</b> [2] - 20:1, 20:14  <b>floor</b> [1] - 26:18  <b>flooring</b> [1] - 28:12  <b>flush</b> [1] - 46:10  <b>focus</b> [3] - 35:12, 36:3, 49:5  <b>focused</b> [1] - 43:15  <b>focuses</b> [1] - 38:2  <b>focusing</b> [2] - 39:3, 61:3  <b>folding</b> [1] - 23:20  <b>folks</b> [2] - 14:13, 42:21  <b>follow</b> [3] - 54:2, 57:2, 67:17  <b>following</b> [2] - 2:1, 26:15  <b>food</b> [2] - 11:20, 70:3  <b>football</b> [1] - 61:19  <b>FOR</b> [4] - 1:1, 1:16, 1:17, 1:20  <b>foreclosed</b> [1] - 20:4  <b>foregoing</b> [1] - 73:1  <b>foremost</b> [1] - 18:23  <b>former</b> [1] - 30:13  <b>forms</b> [1] - 17:7  <b>forth</b> [1] - 68:2  <b>forward</b> [4] - 34:5, 34:13, 37:15, 41:18  <b>four</b> [12] - 7:13, 13:6, 19:13, 20:18, 41:2, 49:16, 50:4, 55:8, 68:1, 68:12, 68:17, 70:14  <b>Fourteenth</b> [1] - 58:15  <b>Fourth</b> [1] - 63:19  <b>fourth</b> [1] - 70:16  <b>framed</b> [1] - 58:24  <b>framework</b> [1] - 33:11  <b>frankly</b> [1] - 15:9  <b>fraught</b> [1] - 59:22  <b>free</b> [5] - 25:4, 31:12, 47:18, 72:11  <b>Free</b> [1] - 8:18  <b>frequently</b> [1] - 50:18  <b>friends</b> [1] - 46:24  <b>front</b> [8] - 13:18,</p>	<p>16:14, 22:23, 29:1, 30:1, 31:9, 50:13, 57:5  <b>fruitful</b> [1] - 23:10  <b>frustrations</b> [1] - 17:17  <b>full</b> [5] - 6:19, 7:20, 41:2, 50:12, 50:13  <b>fully</b> [2] - 40:25, 47:22  <b>function</b> [1] - 23:10  <b>functioning</b> [1] - 40:7  <b>functions</b> [1] - 22:17  <b>funny</b> [1] - 59:16</p> <p style="text-align: center;"><b>G</b></p> <p><b>galls</b> [1] - 59:17  <b>gambling</b> [1] - 45:5  <b>game</b> [1] - 72:8  <b>games</b> [1] - 37:9  <b>gather</b> [1] - 69:10  <b>gathering</b> [8] - 4:12, 14:14, 14:20, 17:14, 29:4, 34:6, 46:22, 55:8  <b>gatherings</b> [24] - 4:19, 4:22, 10:20, 22:18, 32:21, 35:23, 38:10, 38:21, 42:12, 42:16, 43:16, 45:1, 45:2, 46:20, 53:21, 55:13, 55:15, 56:6, 56:7, 57:24, 57:25, 59:25, 68:24, 68:25  <b>GENERAL</b> [1] - 1:17  <b>general</b> [7] - 27:5, 35:10, 41:3, 41:13, 60:5, 60:20, 68:20  <b>General</b> [3] - 2:23, 3:1, 44:20  <b>General's</b> [1] - 25:17  <b>generally</b> [1] - 35:12  <b>Giants</b> [2] - 61:5, 61:18  <b>gigantic</b> [1] - 29:12  <b>given</b> [9] - 9:3, 13:9, 13:14, 26:22, 31:10, 37:21, 39:18, 53:17, 66:6  <b>glad</b> [1] - 31:20  <b>global</b> [1] - 59:13  <b>God</b> [3] - 25:11, 53:2, 65:1  <b>gold</b> [1] - 12:7  <b>goodie</b> [1] - 53:17  <b>govern</b> [1] - 10:5  <b>governing</b> [2] - 13:15, 13:16</p>	<p><b>government</b> [9] - 12:11, 13:21, 23:1, 23:19, 23:20, 35:1, 67:2, 67:10, 67:11  <b>Governor</b> [29] - 4:10, 9:21, 11:10, 11:12, 11:18, 13:19, 14:18, 15:7, 17:3, 22:21, 22:25, 24:4, 24:22, 24:25, 27:25, 28:24, 41:1, 41:19, 44:17, 46:16, 46:24, 46:25, 47:18, 53:18, 53:23, 54:5, 62:20, 62:24  <b>governor</b> [5] - 16:25, 47:4, 47:7, 47:10, 47:12  <b>Governor's</b> [9] - 6:18, 14:4, 14:11, 15:15, 16:1, 16:16, 35:14, 36:18, 46:7  <b>governors</b> [3] - 23:17, 23:24  <b>governors'</b> [1] - 55:12  <b>grabbing</b> [1] - 28:10  <b>gracious</b> [1] - 26:22  <b>grade</b> [1] - 16:18  <b>gradual</b> [4] - 32:19, 33:20, 34:17, 48:13  <b>gradually</b> [2] - 35:1, 40:3  <b>grant</b> [3] - 49:22, 52:25, 72:13  <b>granted</b> [1] - 13:12  <b>granting</b> [3] - 55:23, 64:5, 68:15  <b>grateful</b> [1] - 58:12  <b>Graves</b> [1] - 7:8  <b>great</b> [12] - 3:6, 9:19, 12:7, 20:9, 23:6, 26:20, 27:2, 32:2, 51:16, 52:22, 58:18  <b>greater</b> [3] - 8:24, 68:16, 70:25  <b>greatest</b> [1] - 66:6  <b>grew</b> [1] - 61:20  <b>groceries</b> [1] - 59:11  <b>grocery</b> [8] - 11:19, 14:10, 26:13, 36:9, 36:20, 37:1, 37:3, 37:19  <b>ground</b> [10] - 19:1, 31:4, 33:13, 34:3, 64:15, 64:25, 65:1, 65:7, 66:7, 71:19  <b>grounds</b> [2] - 31:9, 31:11  <b>group</b> [4] - 15:19, 33:16, 42:19, 43:8</p>	<p><b>grows</b> [1] - 59:12  <b>guarantee</b> [1] - 39:4  <b>guaranteed</b> [1] - 69:24  <b>guard</b> [1] - 58:14  <b>guess</b> [3] - 30:23, 40:19, 61:6  <b>guidance</b> [1] - 22:20  <b>guidelines</b> [5] - 8:1, 8:6, 8:16, 8:17, 54:3  <b>gun</b> [3] - 25:8, 28:5, 47:11  <b>gym</b> [1] - 46:1  <b>gyms</b> [1] - 34:11</p> <p style="text-align: center;"><b>H</b></p> <p><b>halls</b> [2] - 60:23, 60:25  <b>handcuffed</b> [1] - 8:23  <b>handed</b> [1] - 45:13  <b>handful</b> [1] - 49:25  <b>handle</b> [2] - 3:4, 34:2  <b>hands</b> [1] - 6:9  <b>hands-on</b> [1] - 6:9  <b>happy</b> [1] - 35:7  <b>harbors</b> [1] - 32:24  <b>hard</b> [1] - 14:12  <b>harder</b> [1] - 39:1  <b>hardly</b> [1] - 60:18  <b>harm</b> [5] - 35:19, 68:14, 68:16, 70:13, 70:18  <b>harms</b> [1] - 46:17  <b>hate</b> [1] - 61:17  <b>healing</b> [1] - 6:9  <b>Health</b> [1] - 13:1  <b>health</b> [9] - 13:2, 18:23, 19:3, 19:7, 20:7, 22:17, 22:19, 43:24, 46:19  <b>healthy</b> [1] - 29:8  <b>hear</b> [6] - 2:3, 3:14, 3:15, 28:16, 50:13, 59:2  <b>heard</b> [3] - 27:7, 71:15  <b>hearing</b> [3] - 50:15, 52:13, 54:12  <b>heart</b> [1] - 60:9  <b>heat</b> [1] - 39:7  <b>heightened</b> [1] - 64:12  <b>held</b> [3] - 16:6, 21:11, 68:5  <b>help</b> [4] - 38:15, 47:3, 65:23, 66:3  <b>helped</b> [1] - 65:7</p>
--	---	--	---	--

<p><b>helpful</b> [1] - 32:17  <b>helps</b> [2] - 37:23, 65:21  <b>high</b> [2] - 41:5, 66:18  <b>higher</b> [2] - 50:11, 67:4  <b>highlighted</b> [1] - 64:7  <b>highlighting</b> [1] - 41:23  <b>highly</b> [1] - 25:15  <b>hill</b> [2] - 56:12, 60:17  <b>himself</b> [4] - 35:22, 41:20, 46:17, 63:25  <b>hints</b> [1] - 10:22  <b>hire</b> [1] - 61:4  <b>historic</b> [2] - 11:14, 11:16  <b>historically</b> [2] - 21:2, 49:17  <b>history</b> [4] - 16:20, 49:24, 57:12, 62:4  <b>hold</b> [4] - 7:23, 42:2, 42:12, 68:4  <b>holding</b> [1] - 53:21  <b>holds</b> [1] - 6:24  <b>holiday</b> [1] - 43:7  <b>Home</b> [9] - 9:11, 26:6, 26:8, 26:16, 28:9, 36:9, 36:20, 36:25, 37:10  <b>home</b> [2] - 20:10, 37:12  <b>homes</b> [3] - 67:5, 67:6, 67:8  <b>Honor</b> [81] - 2:5, 2:16, 2:22, 4:9, 5:1, 5:12, 6:12, 6:21, 7:4, 7:16, 8:2, 8:21, 9:12, 11:5, 11:15, 11:24, 12:12, 13:5, 13:18, 14:9, 14:16, 15:4, 15:20, 16:7, 16:13, 16:22, 17:9, 17:24, 18:15, 18:16, 19:3, 21:25, 22:4, 22:10, 22:24, 23:5, 24:24, 25:6, 26:2, 26:9, 26:23, 26:25, 27:10, 27:24, 28:22, 29:11, 31:25, 32:16, 33:22, 35:4, 35:6, 35:17, 36:21, 38:15, 39:13, 41:12, 46:9, 47:1, 48:8, 48:17, 49:4, 49:11, 50:6, 51:2, 51:19, 52:4, 53:5, 53:8, 53:11, 55:24, 56:12, 57:13, 60:15, 61:20, 62:9, 63:3,</p>	<p>63:6, 64:20, 66:23, 66:24, 72:16  <b>Honor's</b> [3] - 9:22, 33:5, 34:24  <b>HONORABLE</b> [1] - 1:12  <b>hopefully</b> [1] - 34:5  <b>hoping</b> [1] - 9:17  <b>hospitalization</b> [2] - 33:25, 72:3  <b>hospitalizations</b> [1] - 70:23  <b>hour</b> [1] - 37:11  <b>hours</b> [1] - 28:13  <b>house</b> [3] - 37:4, 37:6, 43:7  <b>House</b> [2] - 7:8, 16:4  <b>houses</b> [6] - 14:24, 24:12, 58:8, 58:10, 58:23, 69:4  <b>human</b> [1] - 19:16  <b>humidity</b> [1] - 39:7  <b>hundred</b> [2] - 11:16, 28:19  <b>hundreds</b> [2] - 54:7, 59:8  <b>husband</b> [1] - 59:13</p>	<p><b>inclination</b> [2] - 57:9, 67:1  <b>include</b> [1] - 19:15  <b>included</b> [1] - 38:19  <b>includes</b> [1] - 6:8  <b>including</b> [10] - 9:8, 17:7, 36:14, 36:24, 40:11, 44:6, 44:7, 45:2, 47:22, 50:8  <b>inconclusive</b> [1] - 11:23  <b>inconsistent</b> [1] - 67:15  <b>incorrect</b> [1] - 56:25  <b>increased</b> [1] - 24:15  <b>increasing</b> [2] - 40:8  <b>increasingly</b> [1] - 19:11  <b>incremental</b> [2] - 13:19, 29:13  <b>incrementally</b> [1] - 12:19  <b>indeed</b> [1] - 15:5  <b>indefinitely</b> [1] - 13:19  <b>independent</b> [1] - 18:10  <b>indicate</b> [1] - 69:22  <b>indicating</b> [1] - 57:8  <b>indisputably</b> [1] - 49:21  <b>individual</b> [1] - 37:3  <b>individuals</b> [1] - 37:21  <b>indoor</b> [30] - 4:3, 4:19, 10:19, 24:15, 31:13, 33:23, 34:8, 34:10, 39:12, 39:21, 39:24, 39:25, 41:10, 42:16, 46:20, 54:14, 54:22, 56:5, 56:7, 56:18, 57:24, 57:25, 59:25, 61:7, 68:24, 71:4, 71:5  <b>indoors</b> [18] - 10:22, 11:23, 13:13, 13:20, 28:4, 36:11, 38:4, 38:7, 38:22, 38:25, 42:12, 45:18, 47:20, 54:25, 58:5, 58:6, 66:13, 70:25  <b>infected</b> [1] - 19:23  <b>infection</b> [2] - 19:20, 34:1  <b>infections</b> [2] - 70:22, 72:2  <b>influenced</b> [1] - 71:14  <b>influential</b> [1] - 57:18  <b>information</b> [4] - 9:6,</p>	<p>20:1, 38:15, 65:4  <b>informed</b> [1] - 4:24  <b>ingress</b> [1] - 61:9  <b>injunction</b> [23] - 48:1, 48:25, 49:16, 49:20, 49:23, 50:22, 51:1, 51:3, 52:7, 52:12, 52:15, 52:22, 52:24, 55:21, 55:23, 64:11, 64:14, 67:17, 68:15, 71:11, 72:4, 72:13  <b>injunctions</b> [4] - 49:9, 49:25, 51:9, 55:17  <b>inside</b> [3] - 7:3, 7:13, 13:9  <b>instead</b> [9] - 7:1, 32:25, 37:8, 38:22, 43:17, 43:22, 45:11, 45:18, 60:14  <b>instructions</b> [1] - 3:3  <b>insufficient</b> [1] - 51:20  <b>intellectual</b> [2] - 51:5, 60:19  <b>intended</b> [1] - 56:13  <b>intensive</b> [1] - 67:23  <b>intention</b> [1] - 20:19  <b>interact</b> [1] - 46:21  <b>interacted</b> [1] - 40:19  <b>interacting</b> [1] - 46:23  <b>interaction</b> [3] - 37:3, 37:4, 40:11  <b>interactions</b> [1] - 37:19  <b>interest</b> [5] - 13:3, 18:11, 68:17, 71:11, 71:13  <b>interested</b> [1] - 10:24  <b>interesting</b> [5] - 3:21, 15:14, 18:2, 72:10, 72:11  <b>interestingly</b> [1] - 12:1  <b>interfere</b> [1] - 14:3  <b>interference</b> [1] - 14:25  <b>interrupt</b> [1] - 3:15  <b>invalid</b> [1] - 46:17  <b>involve</b> [1] - 12:3  <b>involved</b> [1] - 16:5  <b>involving</b> [2] - 27:16, 30:6  <b>irrational</b> [4] - 36:5, 36:15, 38:3, 61:8  <b>irrationality</b> [1] - 62:18  <b>irrelevant</b> [1] - 56:18</p>	<p><b>irreparable</b> [4] - 35:19, 68:14, 70:13, 70:18  <b>issue</b> [9] - 15:10, 15:21, 32:2, 46:3, 48:25, 49:8, 51:9, 54:20, 67:17  <b>issued</b> [2] - 22:21, 44:20  <b>issues</b> [6] - 3:20, 15:15, 22:18, 39:6, 57:16, 63:21  <b>issuing</b> [1] - 44:3  <b>items</b> [3] - 43:5, 43:6, 43:9  <b>iteration</b> [1] - 68:24  <b>itself</b> [4] - 23:20, 29:7, 46:12, 63:14</p>
<b>J</b>				
<p><b>idea</b> [8] - 4:13, 13:18, 15:9, 29:13, 34:11, 36:2, 40:7, 42:17  <b>identify</b> [2] - 40:9, 40:10  <b>ignore</b> [1] - 55:21  <b>Ill</b> [1] - 71:22  <b>imagine</b> [3] - 37:7, 47:4, 54:10  <b>immaterial</b> [1] - 46:12  <b>immediately</b> [1] - 53:2  <b>impact</b> [1] - 39:7  <b>implicate</b> [1] - 71:1  <b>implicated</b> [1] - 21:13  <b>importance</b> [2] - 11:14, 11:16  <b>important</b> [9] - 15:11, 32:19, 33:5, 33:7, 42:17, 43:10, 44:12, 67:2, 68:23  <b>impose</b> [3] - 49:8, 68:21, 70:6  <b>imposed</b> [1] - 21:2  <b>imposes</b> [1] - 39:16  <b>imposing</b> [1] - 52:1  <b>inappropriate</b> [1] - 28:2</p>	<p><b>idea</b> [8] - 4:13, 13:18, 15:9, 29:13, 34:11, 36:2, 40:7, 42:17  <b>identify</b> [2] - 40:9, 40:10  <b>ignore</b> [1] - 55:21  <b>Ill</b> [1] - 71:22  <b>imagine</b> [3] - 37:7, 47:4, 54:10  <b>immaterial</b> [1] - 46:12  <b>immediately</b> [1] - 53:2  <b>impact</b> [1] - 39:7  <b>implicate</b> [1] - 71:1  <b>implicated</b> [1] - 21:13  <b>importance</b> [2] - 11:14, 11:16  <b>important</b> [9] - 15:11, 32:19, 33:5, 33:7, 42:17, 43:10, 44:12, 67:2, 68:23  <b>impose</b> [3] - 49:8, 68:21, 70:6  <b>imposed</b> [1] - 21:2  <b>imposes</b> [1] - 39:16  <b>imposing</b> [1] - 52:1  <b>inappropriate</b> [1] - 28:2</p>	<p><b>idea</b> [8] - 4:13, 13:18, 15:9, 29:13, 34:11, 36:2, 40:7, 42:17  <b>identify</b> [2] - 40:9, 40:10  <b>ignore</b> [1] - 55:21  <b>Ill</b> [1] - 71:22  <b>imagine</b> [3] - 37:7, 47:4, 54:10  <b>immaterial</b> [1] - 46:12  <b>immediately</b> [1] - 53:2  <b>impact</b> [1] - 39:7  <b>implicate</b> [1] - 71:1  <b>implicated</b> [1] - 21:13  <b>importance</b> [2] - 11:14, 11:16  <b>important</b> [9] - 15:11, 32:19, 33:5, 33:7, 42:17, 43:10, 44:12, 67:2, 68:23  <b>impose</b> [3] - 49:8, 68:21, 70:6  <b>imposed</b> [1] - 21:2  <b>imposes</b> [1] - 39:16  <b>imposing</b> [1] - 52:1  <b>inappropriate</b> [1] - 28:2</p>	<p><b>idea</b> [8] - 4:13, 13:18, 15:9, 29:13, 34:11, 36:2, 40:7, 42:17  <b>identify</b> [2] - 40:9, 40:10  <b>ignore</b> [1] - 55:21  <b>Ill</b> [1] - 71:22  <b>imagine</b> [3] - 37:7, 47:4, 54:10  <b>immaterial</b> [1] - 46:12  <b>immediately</b> [1] - 53:2  <b>impact</b> [1] - 39:7  <b>implicate</b> [1] - 71:1  <b>implicated</b> [1] - 21:13  <b>importance</b> [2] - 11:14, 11:16  <b>important</b> [9] - 15:11, 32:19, 33:5, 33:7, 42:17, 43:10, 44:12, 67:2, 68:23  <b>impose</b> [3] - 49:8, 68:21, 70:6  <b>imposed</b> [1] - 21:2  <b>imposes</b> [1] - 39:16  <b>imposing</b> [1] - 52:1  <b>inappropriate</b> [1] - 28:2</p>	<p><b>JEREMY</b> [1] - 1:18  <b>Jeremy</b> [1] - 2:25  <b>JERSEY</b> [3] - 1:1, 1:17, 1:19  <b>Jersey</b> [28] - 1:10, 2:23, 5:7, 15:22, 15:25, 18:22, 20:8, 29:5, 29:6, 34:14, 37:25, 44:6, 45:10, 47:8, 53:18, 56:5, 64:25, 65:1, 65:7, 65:10, 65:12, 65:14, 65:17, 65:18, 65:24, 66:5, 67:3  <b>Jersey's</b> [3] - 62:17, 67:5, 67:6  <b>Jew</b> [1] - 59:4  <b>Jews</b> [1] - 43:8  <b>joke</b> [1] - 55:1  <b>judge</b> [7] - 18:10, 21:9, 52:11, 52:17, 54:11, 57:1  <b>JUDGE</b> [1] - 1:12  <b>Judge</b> [3] - 52:23, 72:6, 72:14  <b>judges</b> [11] - 21:23, 23:16, 23:18, 23:25, 51:7, 52:18, 57:7, 57:9, 71:20, 71:22  <b>judging</b> [1] - 23:8  <b>judicial</b> [2] - 30:25, 67:3  <b>judiciary</b> [1] - 18:11  <b>juice</b> [1] - 14:11  <b>juncture</b> [1] - 25:2  <b>June</b> [8] - 1:10, 21:8, 30:5, 61:14, 61:15, 70:16, 73:7  <b>jurisprudence</b> [1] -</p>

<p>51:12  <b>jurist</b> <sup>[1]</sup> - 52:5  <b>Justice</b> <sup>[38]</sup> - 15:17,  23:23, 26:9, 27:10,  27:12, 28:7, 28:14,  28:15, 28:25, 29:25,  30:24, 31:10, 32:9,  35:22, 36:24, 37:17,  37:24, 38:11, 39:23,  48:13, 49:14, 49:17,  50:2, 55:11, 56:13,  56:19, 56:23, 57:8,  59:18, 61:24, 62:13,  63:24, 64:6, 64:16,  66:15, 66:25, 71:17,  71:25  <b>Justice's</b> <sup>[8]</sup> - 33:10,  36:3, 37:13, 63:7,  63:23, 65:15, 66:7,  71:14  <b>justices</b> <sup>[1]</sup> - 57:10  <b>justification</b> <sup>[2]</sup> -  27:9, 31:9  <b>justified</b> <sup>[2]</sup> - 13:14,  56:23  <b>justify</b> <sup>[4]</sup> - 17:10,  38:16, 58:21, 58:22</p>	<p>58:25, 65:3  <b>largely</b> <sup>[2]</sup> - 67:4,  67:25  <b>larger</b> <sup>[3]</sup> - 7:3,  42:16, 69:10  <b>last</b> <sup>[15]</sup> - 4:23, 6:16,  7:21, 11:6, 14:5, 15:1,  16:3, 16:18, 20:17,  22:21, 23:4, 48:4,  49:24, 63:18, 66:21  <b>lasting</b> <sup>[1]</sup> - 60:1  <b>late</b> <sup>[3]</sup> - 8:23, 9:17  <b>latest</b> <sup>[2]</sup> - 37:12,  68:24  <b>Law</b> <sup>[1]</sup> - 25:16  <b>law</b> <sup>[24]</sup> - 18:5, 40:2,  42:25, 43:22, 44:1,  44:2, 44:8, 44:13,  44:18, 46:11, 46:14,  46:17, 46:18, 47:7,  47:14, 56:14, 56:15,  57:20, 63:12, 64:1,  64:2, 67:9, 72:12  <b>law's</b> <sup>[2]</sup> - 46:6,  46:12  <b>lawn</b> <sup>[1]</sup> - 9:20  <b>laws</b> <sup>[2]</sup> - 44:11,  68:20  <b>lawsuit</b> <sup>[1]</sup> - 45:24  <b>lawyers</b> <sup>[1]</sup> - 2:7  <b>lay</b> <sup>[1]</sup> - 38:17  <b>leaders</b> <sup>[3]</sup> - 21:15,  33:12, 48:14  <b>leads</b> <sup>[1]</sup> - 47:24  <b>learn</b> <sup>[1]</sup> - 37:11  <b>least</b> <sup>[10]</sup> - 8:7, 8:24,  9:17, 12:15, 15:2,  17:8, 31:6, 31:12,  52:18, 70:13  <b>leave</b> <sup>[2]</sup> - 37:7, 37:9  <b>leaving</b> <sup>[2]</sup> - 28:11,  38:23  <b>legal</b> <sup>[8]</sup> - 18:13,  32:13, 46:13, 46:16,  47:12, 49:20, 63:20,  63:22  <b>legislative</b> <sup>[3]</sup> - 17:4,  20:3, 22:17  <b>legislature</b> <sup>[6]</sup> - 13:1,  13:17, 15:22, 15:25,  16:25, 17:2  <b>legitimate</b> <sup>[2]</sup> -  61:18, 61:22  <b>less</b> <sup>[3]</sup> - 44:12, 59:9,  61:14  <b>level</b> <sup>[9]</sup> - 8:7, 12:19,  20:1, 22:19, 23:9,  32:25, 51:14, 58:21,  66:8  <b>lie</b> <sup>[1]</sup> - 64:14</p>	<p><b>Life</b> <sup>[1]</sup> - 10:15  <b>lift</b> <sup>[1]</sup> - 33:4  <b>lifted</b> <sup>[1]</sup> - 32:20  <b>lifting</b> <sup>[2]</sup> - 33:20,  40:4  <b>light</b> <sup>[3]</sup> - 17:11,  35:14, 65:7  <b>likelihood</b> <sup>[2]</sup> -  68:13, 70:9  <b>limit</b> <sup>[8]</sup> - 4:22,  11:10, 12:22, 33:2,  36:12, 39:21, 40:5,  40:14  <b>limitation</b> <sup>[2]</sup> - 16:11,  20:21  <b>limitations</b> <sup>[3]</sup> - 8:10,  21:1, 59:1  <b>limited</b> <sup>[3]</sup> - 14:25,  19:6, 19:14  <b>limiting</b> <sup>[1]</sup> - 58:22  <b>limits</b> <sup>[5]</sup> - 4:12,  5:16, 7:17, 24:15,  69:7  <b>line</b> <sup>[5]</sup> - 22:11,  22:24, 29:18, 29:19,  61:12  <b>lines</b> <sup>[2]</sup> - 22:9, 54:13  <b>list</b> <sup>[2]</sup> - 44:22, 59:11  <b>listen</b> <sup>[1]</sup> - 59:4  <b>literally</b> <sup>[1]</sup> - 11:18  <b>litigated</b> <sup>[1]</sup> - 62:16  <b>litigation</b> <sup>[2]</sup> - 32:14,  49:13  <b>litigator</b> <sup>[1]</sup> - 60:17  <b>live</b> <sup>[1]</sup> - 58:12  <b>lived</b> <sup>[1]</sup> - 37:20  <b>Lives</b> <sup>[2]</sup> - 42:4,  43:18  <b>living</b> <sup>[1]</sup> - 33:17  <b>lockdown</b> <sup>[1]</sup> - 19:20  <b>lockdowns</b> <sup>[1]</sup> - 72:1  <b>long-term</b> <sup>[1]</sup> - 33:17  <b>look</b> <sup>[12]</sup> - 7:12,  21:14, 23:14, 23:19,  26:22, 28:5, 28:17,  54:18, 57:10, 64:25,  65:9, 70:8  <b>looked</b> <sup>[2]</sup> - 62:14,  65:1  <b>looking</b> <sup>[6]</sup> - 38:15,  50:16, 56:23, 60:25,  62:13, 64:12  <b>looks</b> <sup>[2]</sup> - 4:15,  44:24  <b>loudly</b> <sup>[1]</sup> - 39:9  <b>lower</b> <sup>[11]</sup> - 38:13,  39:14, 39:18, 41:9,  50:11, 50:12, 64:5,  65:14, 66:16  <b>Lowes</b> <sup>[1]</sup> - 28:10</p>	<p style="text-align: center;"><b>M</b></p> <p><b>machine</b> <sup>[1]</sup> - 47:11  <b>mail</b> <sup>[1]</sup> - 25:8  <b>mails</b> <sup>[1]</sup> - 25:13  <b>main</b> <sup>[1]</sup> - 63:4  <b>maintain</b> <sup>[1]</sup> - 20:20  <b>major</b> <sup>[1]</sup> - 29:2  <b>majority</b> <sup>[4]</sup> - 16:24,  19:23, 36:22, 64:2  <b>malls</b> <sup>[1]</sup> - 71:8  <b>man</b> <sup>[1]</sup> - 12:11  <b>managed</b> <sup>[2]</sup> - 13:2,  22:19  <b>mandated</b> <sup>[1]</sup> - 67:7  <b>mandatory</b> <sup>[3]</sup> -  48:25, 64:6, 64:11  <b>Mandelbaum</b> <sup>[1]</sup> -  2:20  <b>MANDELBAUM</b> <sup>[1]</sup> -  1:14  <b>manner</b> <sup>[2]</sup> - 14:1,  22:8  <b>march</b> <sup>[3]</sup> - 11:9,  35:14, 47:1  <b>March</b> <sup>[7]</sup> - 14:4,  18:4, 20:13, 26:18,  31:1, 31:2, 61:13  <b>marched</b> <sup>[1]</sup> - 14:8  <b>marching</b> <sup>[4]</sup> - 11:18,  28:2, 34:5, 41:24  <b>MARKET</b> <sup>[1]</sup> - 1:18  <b>mask</b> <sup>[5]</sup> - 11:21,  21:19, 24:17  <b>masks</b> <sup>[6]</sup> - 24:17,  27:17, 30:20, 41:3,  45:25, 69:14  <b>massive</b> <sup>[1]</sup> - 29:3  <b>master</b> <sup>[1]</sup> - 25:12  <b>Matter</b> <sup>[2]</sup> - 42:4,  43:18  <b>matter</b> <sup>[15]</sup> - 3:3,  38:16, 50:9, 51:12,  51:15, 54:24, 55:25,  56:14, 60:16, 60:20,  66:12, 71:13, 72:18,  73:2  <b>matters</b> <sup>[2]</sup> - 50:14,  56:2  <b>mean</b> <sup>[15]</sup> - 9:1,  11:24, 15:16, 20:16,  21:23, 24:3, 27:6,  27:11, 28:11, 52:23,  55:22, 57:25, 59:4,  71:5  <b>meaning</b> <sup>[3]</sup> - 5:19,  5:20, 17:25  <b>means</b> <sup>[4]</sup> - 25:24,  31:25, 41:18, 42:24</p>	<p><b>meant</b> <sup>[1]</sup> - 32:9  <b>measures</b> <sup>[1]</sup> - 65:25  <b>mechanical</b> <sup>[1]</sup> -  1:24  <b>meet</b> <sup>[3]</sup> - 7:17, 12:4,  13:10  <b>meeting</b> <sup>[1]</sup> - 20:11  <b>member</b> <sup>[2]</sup> - 30:13,  30:20  <b>memo</b> <sup>[1]</sup> - 25:9  <b>Memorial</b> <sup>[2]</sup> - 25:21,  27:21  <b>mentor</b> <sup>[1]</sup> - 30:24  <b>Mercer</b> <sup>[1]</sup> - 61:20  <b>merely</b> <sup>[5]</sup> - 23:4,  29:23, 57:4, 57:5,  58:16  <b>merits</b> <sup>[4]</sup> - 3:17,  57:11, 68:13, 70:9  <b>met</b> <sup>[2]</sup> - 13:23,  64:13  <b>MetLife</b> <sup>[1]</sup> - 61:5  <b>micromanage</b> <sup>[1]</sup> -  30:23  <b>mid</b> <sup>[2]</sup> - 20:6, 21:8  <b>mid-June</b> <sup>[1]</sup> - 21:8  <b>mid-May</b> <sup>[1]</sup> - 20:6  <b>middle</b> <sup>[3]</sup> - 48:1,  48:5, 59:5  <b>midst</b> <sup>[1]</sup> - 49:1  <b>might</b> <sup>[11]</sup> - 9:24,  33:8, 37:1, 45:2, 45:3,  45:9, 45:25, 46:1,  46:2, 47:3, 55:5  <b>milk</b> <sup>[1]</sup> - 14:10  <b>million</b> <sup>[2]</sup> - 65:12,  65:13  <b>millions</b> <sup>[1]</sup> - 25:13  <b>Millville</b> <sup>[1]</sup> - 10:16  <b>Mincha</b> <sup>[3]</sup> - 59:5,  59:9, 60:5  <b>mind</b> <sup>[2]</sup> - 10:16,  55:22  <b>minds</b> <sup>[2]</sup> - 57:9,  57:10  <b>minimal</b> <sup>[1]</sup> - 10:3  <b>minion.(sic)</b> <sup>[1]</sup> -  59:7  <b>minute</b> <sup>[1]</sup> - 33:11  <b>minutes</b> <sup>[5]</sup> - 37:6,  59:6, 59:9, 60:11,  62:11  <b>misconstrued</b> <sup>[1]</sup> -  58:8  <b>mistaken</b> <sup>[1]</sup> - 67:8  <b>mistakes</b> <sup>[1]</sup> - 21:16  <b>misunderstood</b> <sup>[1]</sup> -  55:4  <b>Mitchell</b> <sup>[1]</sup> - 1:9  <b>moment</b> <sup>[3]</sup> - 11:13,</p>
<b>K</b>				
<p><b>Kagan</b> <sup>[1]</sup> - 49:15  <b>keep</b> <sup>[2]</sup> - 4:17, 54:3  <b>kind</b> <sup>[18]</sup> - 7:5, 11:17,  24:8, 25:25, 26:1,  32:19, 43:20, 44:4,  44:9, 47:13, 48:13,  48:14, 56:11, 59:3,  64:6, 64:13, 64:22,  65:19  <b>kinds</b> <sup>[5]</sup> - 24:2,  56:8, 65:3, 71:21,  72:1  <b>king</b> <sup>[1]</sup> - 54:9  <b>kitchen</b> <sup>[1]</sup> - 28:12  <b>known</b> <sup>[1]</sup> - 43:10  <b>knows</b> <sup>[4]</sup> - 19:3,  23:22, 25:6, 26:17  <b>KUGLER</b> <sup>[1]</sup> - 1:12</p>				
<b>L</b>				
<p><b>labor</b> <sup>[1]</sup> - 67:23  <b>lack</b> <sup>[1]</sup> - 20:14  <b>laid</b> <sup>[1]</sup> - 3:20  <b>language</b> <sup>[1]</sup> - 35:24  <b>large</b> <sup>[12]</sup> - 14:20,  18:17, 38:20, 40:13,  41:25, 42:2, 42:12,  44:6, 45:4, 46:20,</p>				



<p>16:20, 44:7  <b>moments</b> [1] - 16:20  <b>money</b> [1] - 12:8  <b>month</b> [1] - 71:25  <b>months</b> [13] - 12:24, 18:9, 19:10, 20:18, 21:20, 31:21, 33:9, 33:18, 34:15, 40:25, 48:18, 65:11, 65:15  <b>morning</b> [4] - 2:3, 2:22, 35:13, 60:11  <b>most</b> [8] - 12:2, 15:24, 16:19, 56:8, 66:10, 66:14, 70:2, 71:8  <b>motion</b> [1] - 52:13  <b>motivating</b> [2] - 24:4, 24:21  <b>mouth</b> [1] - 30:15  <b>move</b> [1] - 14:15  <b>moves</b> [1] - 53:1  <b>movie</b> [5] - 58:1, 58:17, 58:21, 60:22, 61:1  <b>movies</b> [1] - 71:6  <b>moving</b> [3] - 34:13, 37:15, 68:16  <b>MR</b> [66] - 2:5, 2:6, 2:8, 2:9, 2:15, 2:16, 2:19, 2:22, 2:25, 3:19, 4:9, 5:1, 5:9, 5:12, 6:3, 6:7, 6:12, 6:23, 7:10, 7:16, 7:18, 7:24, 8:2, 8:14, 8:21, 10:12, 10:15, 11:5, 15:20, 16:7, 16:13, 17:24, 18:15, 21:25, 22:3, 24:24, 28:15, 28:22, 30:11, 30:13, 31:17, 31:20, 31:24, 32:3, 32:5, 32:15, 35:9, 49:11, 50:6, 53:5, 53:8, 53:14, 54:10, 55:24, 56:11, 58:2, 58:7, 61:20, 62:8, 63:3, 66:23, 72:6, 72:9, 72:14, 72:16, 72:17  <b>municipal</b> [2] - 22:17, 22:19  <b>Murphy</b> [5] - 14:18, 15:7, 53:23, 54:5  <b>MURPHY</b> [1] - 1:7  <b>must</b> [2] - 54:2, 71:22  <b>Myers</b> [1] - 10:13</p>	<p>44:22, 58:9  <b>Nami</b> [3] - 1:22, 3:13, 73:4  <b>national</b> [1] - 23:9  <b>nature</b> [8] - 4:5, 21:12, 32:12, 45:2, 58:3, 69:12, 69:16, 70:3  <b>nearly</b> [1] - 20:12  <b>necessarily</b> [6] - 8:3, 8:8, 9:1, 10:5, 23:9, 27:16  <b>necessary</b> [6] - 11:7, 17:13, 26:20, 40:6, 43:9, 49:18  <b>need</b> [12] - 3:16, 15:11, 28:5, 28:18, 28:20, 32:4, 36:13, 43:23, 48:24, 50:4, 68:12  <b>needs</b> [2] - 40:21, 62:7  <b>neighbors</b> [1] - 46:23  <b>NETWORK</b> [1] - 1:3  <b>Network</b> [3] - 5:11, 5:13, 6:1  <b>neutral</b> [3] - 43:1, 43:4, 60:25  <b>Nevada</b> [1] - 55:9  <b>never</b> [7] - 24:12, 46:5, 53:19, 57:1, 65:10, 69:4, 69:6  <b>NEW</b> [3] - 1:1, 1:17, 1:19  <b>new</b> [5] - 4:13, 8:15, 8:16, 15:19, 20:1  <b>New</b> [33] - 1:10, 2:23, 5:7, 10:15, 15:22, 15:24, 18:22, 20:8, 29:5, 29:6, 34:14, 37:25, 44:6, 45:10, 47:8, 53:18, 56:4, 61:18, 62:17, 64:25, 65:1, 65:7, 65:10, 65:12, 65:14, 65:17, 65:18, 65:24, 66:5, 67:3, 67:5, 67:6  <b>Newark</b> [2] - 6:1, 6:21  <b>news</b> [1] - 27:2  <b>next</b> [9] - 7:7, 9:22, 15:18, 28:17, 30:16, 45:23, 48:3, 53:17, 59:12  <b>nice</b> [2] - 26:17, 59:6  <b>nicest</b> [1] - 31:25  <b>nine</b> [1] - 24:10  <b>Ninth</b> [1] - 30:2  <b>non</b> [7] - 14:25, 44:9,</p>	<p>55:15, 55:18, 68:16, 68:22, 68:25  <b>non-enforcement</b> [1] - 44:9  <b>non-interference</b> [1] - 14:25  <b>non-moving</b> [1] - 68:16  <b>non-religious</b> [4] - 55:15, 55:18, 68:22, 68:25  <b>none</b> [1] - 46:2  <b>nonessential</b> [3] - 58:10, 58:11, 69:22  <b>nonetheless</b> [1] - 51:10  <b>normal</b> [4] - 10:18, 22:16, 50:9, 52:12  <b>normally</b> [1] - 6:25  <b>note</b> [5] - 41:21, 42:6, 47:17, 64:3, 67:3  <b>noted</b> [7] - 33:22, 36:21, 39:23, 48:8, 48:17, 64:20, 66:2  <b>nothing</b> [5] - 14:5, 14:6, 29:17, 38:7, 44:16  <b>notwithstanding</b> [4] - 9:4, 16:24, 56:2, 64:21  <b>now</b> [1] - 63:12  <b>NUMBER</b> [1] - 1:3  <b>number</b> [23] - 4:11, 4:13, 4:18, 7:4, 12:17, 18:16, 20:9, 21:16, 33:14, 36:15, 40:4, 48:3, 48:20, 55:7, 59:25, 61:3, 66:1, 68:17, 70:8, 70:22, 70:23, 70:25  <b>numbers</b> [6] - 5:20, 7:13, 16:5, 41:6, 43:7, 69:10  <b>numerical</b> [4] - 7:17, 36:13, 39:16, 45:23  <b>nursing</b> [4] - 20:10, 67:5, 67:6, 67:8  <b>Nutley</b> [2] - 26:15, 59:10</p>	<p><b>obvious</b> [1] - 51:17  <b>obviously</b> [11] - 3:9, 8:4, 9:25, 34:7, 35:7, 35:8, 35:22, 38:5, 41:19, 44:8, 57:18  <b>occurring</b> [1] - 58:6  <b>OF</b> [2] - 1:1, 1:17  <b>offend</b> [1] - 58:16  <b>office</b> [1] - 31:23  <b>Office</b> [3] - 2:23, 3:1, 25:17  <b>OFFICE</b> [1] - 1:17  <b>officers</b> [4] - 43:22, 44:2, 44:8, 44:18  <b>official</b> [4] - 15:10, 23:8, 46:11, 46:14  <b>Official</b> [2] - 1:22, 73:4  <b>often</b> [4] - 38:24, 51:3, 51:4, 52:5  <b>old</b> [1] - 29:9  <b>once</b> [7] - 5:4, 31:4, 33:21, 34:4, 36:16, 54:24, 64:12  <b>one</b> [34] - 5:13, 6:4, 6:7, 7:7, 10:16, 11:13, 11:17, 12:11, 12:15, 16:19, 18:16, 24:10, 24:22, 25:21, 25:22, 25:24, 26:14, 27:6, 27:8, 33:10, 34:1, 35:14, 36:8, 38:5, 40:15, 41:20, 42:11, 42:19, 43:17, 53:15, 63:4, 63:5, 68:12, 70:8  <b>one's</b> [1] - 26:15  <b>one-man</b> [1] - 12:11  <b>ones</b> [2] - 46:22, 46:23  <b>ongoing</b> [1] - 32:18  <b>open</b> [8] - 2:2, 8:24, 14:23, 17:22, 30:16, 38:25, 46:1, 46:5  <b>opening</b> [2] - 24:14, 69:9  <b>openings</b> [2] - 29:20, 29:21  <b>operate</b> [5] - 25:17, 41:14, 70:14, 70:15, 70:16  <b>operating</b> [1] - 4:2  <b>operation</b> [2] - 22:16, 50:9  <b>operations</b> [1] - 35:2  <b>opinion</b> [17] - 27:12, 32:9, 33:10, 36:3, 55:11, 55:17, 61:25, 62:1, 63:7, 63:23, 63:24, 64:17, 65:16,</p>	<p>66:7, 67:22, 67:23, 71:25  <b>opportunities</b> [1] - 50:23  <b>opportunity</b> [11] - 3:11, 3:12, 6:13, 8:24, 9:4, 20:3, 32:16, 50:12, 51:15, 53:10, 63:2  <b>opposed</b> [2] - 9:11, 39:1  <b>opposite</b> [1] - 43:14  <b>oral</b> [2] - 21:8, 69:4  <b>orange</b> [2] - 14:11, 43:7  <b>Order</b> [7] - 4:3, 4:14, 35:18, 41:18, 41:23, 42:9, 47:19  <b>order</b> [12] - 4:7, 9:9, 10:10, 18:14, 24:10, 35:23, 43:5, 56:5, 68:3, 68:19, 71:2, 72:5  <b>ORDER</b> [1] - 1:5  <b>order's</b> [1] - 22:23  <b>ordered</b> [1] - 60:7  <b>orders</b> [18] - 6:18, 18:3, 18:6, 18:7, 18:13, 20:13, 21:6, 23:21, 35:21, 35:25, 38:17, 42:5, 44:20, 48:21, 49:9, 55:13, 68:7, 68:20  <b>Oregon</b> [1] - 55:9  <b>organizations</b> [1] - 4:19  <b>original</b> [1] - 19:2  <b>Orthodox</b> [2] - 43:8, 59:4  <b>otherwise</b> [2] - 5:22, 9:24  <b>out-of-court</b> [1] - 23:7  <b>outbreak</b> [1] - 65:20  <b>outcome</b> [2] - 60:12, 67:24  <b>outdoor</b> [25] - 4:4, 5:19, 7:23, 10:23, 11:10, 13:24, 24:14, 26:23, 27:4, 30:4, 33:23, 36:19, 38:8, 38:18, 39:11, 41:8, 42:2, 45:2, 45:5, 53:21, 54:14, 54:22, 61:7, 69:11, 71:5  <b>outdoor/indoor</b> [1] - 38:16  <b>outdoors</b> [24] - 5:22, 10:22, 10:25, 11:2, 11:22, 13:21, 27:1,</p>
<b>N</b>		<b>O</b>		
<p><b>name</b> [3] - 43:8,</p>		<p><b>obey</b> [1] - 67:17  <b>obligated</b> [1] - 57:2  <b>obnoxious</b> [1] - 58:12  <b>observational</b> [1] - 33:17  <b>observe</b> [1] - 25:22</p>		

<p>33:24, 36:11, 38:5, 38:7, 38:14, 38:22, 38:24, 39:17, 41:17, 41:25, 45:6, 48:10, 54:25, 66:2, 66:16</p> <p><b>outlived</b> [1] - 31:8</p> <p><b>outset</b> [2] - 41:21, 42:7</p> <p><b>outside</b> [4] - 7:2, 12:10, 13:10, 59:7</p> <p><b>overall</b> [1] - 65:25</p> <p><b>overcome</b> [1] - 50:19</p> <p><b>overheard</b> [1] - 25:9</p> <p><b>override</b> [1] - 17:3</p> <p><b>overwhelming</b> [2] - 19:3, 19:6</p>	<p><b>party</b> [5] - 17:1, 45:3, 45:4, 68:16</p> <p><b>pass</b> [1] - 18:12</p> <p><b>passed</b> [3] - 14:4, 51:10, 71:24</p> <p><b>passion</b> [3] - 31:15, 32:2, 32:7</p> <p><b>past</b> [5] - 5:6, 6:11, 34:15, 46:6, 47:6</p> <p><b>paste</b> [1] - 52:8</p> <p><b>Pastor</b> [4] - 5:25, 6:10, 7:7, 10:13</p> <p><b>pastor</b> [2] - 10:8, 11:3</p> <p><b>pastors</b> [2] - 13:7, 68:1</p> <p><b>patently</b> [1] - 51:17</p> <p><b>patient</b> [1] - 34:1</p> <p><b>pattern</b> [1] - 51:7</p> <p><b>pause</b> [1] - 2:12</p> <p><b>pay</b> [1] - 16:17</p> <p><b>pending</b> [1] - 48:20</p> <p><b>people</b> [47] - 3:14, 4:4, 5:15, 5:21, 9:10, 9:11, 10:18, 12:17, 13:20, 14:17, 17:13, 17:16, 20:22, 23:25, 24:1, 24:6, 24:9, 25:11, 26:5, 26:11, 26:12, 27:13, 28:10, 28:12, 29:3, 32:4, 40:16, 40:17, 40:19, 42:12, 45:6, 53:17, 54:7, 54:24, 59:2, 59:8, 61:2, 61:5, 62:22, 69:5, 69:24, 70:6, 70:25, 71:21</p> <p><b>per</b> [1] - 56:16</p> <p><b>percent</b> [6] - 4:3, 7:1, 20:8, 28:19, 40:14, 40:20</p> <p><b>percentage</b> [2] - 36:12, 39:22</p> <p><b>perfect</b> [1] - 46:19</p> <p><b>perhaps</b> [4] - 19:13, 23:17, 57:4, 71:24</p> <p><b>period</b> [2] - 19:13, 38:13</p> <p><b>permission</b> [3] - 13:9, 13:12, 26:23</p> <p><b>permit</b> [6] - 12:20, 24:16, 54:16, 69:14, 70:24, 72:13</p> <p><b>permitted</b> [2] - 24:11, 60:8</p> <p><b>permitting</b> [2] - 54:13, 69:10</p> <p><b>person</b> [2] - 39:21, 40:5</p> <p><b>personal</b> [1] - 52:23</p>	<p><b>pharmacy</b> [1] - 70:3</p> <p><b>phase</b> [1] - 41:2</p> <p><b>PHILIP</b> [1] - 1:7</p> <p><b>phone</b> [3] - 40:17, 40:18, 60:7</p> <p><b>photos</b> [1] - 14:12</p> <p><b>phrase</b> [1] - 33:6</p> <p><b>PI</b> [2] - 63:9, 63:14</p> <p><b>pick</b> [1] - 59:11</p> <p><b>pickup</b> [1] - 56:10</p> <p><b>pictures</b> [1] - 29:2</p> <p><b>PLACE</b> [1] - 1:3</p> <p><b>Place</b> [5] - 5:11, 5:13, 6:1, 6:21, 6:24</p> <p><b>place</b> [20] - 2:1, 5:16, 7:9, 7:21, 15:8, 20:9, 22:8, 27:1, 37:21, 38:21, 41:16, 43:13, 45:4, 45:18, 51:18, 53:25, 54:15, 59:1, 65:4, 66:2</p> <p><b>placed</b> [1] - 36:14</p> <p><b>plain</b> [1] - 35:23</p> <p><b>plaintiff</b> [2] - 45:8, 66:22</p> <p><b>plaintiffs</b> [16] - 2:18, 2:19, 3:24, 4:2, 5:3, 18:12, 42:7, 45:16, 45:23, 45:24, 47:2, 47:17, 48:18, 70:10, 70:14, 72:4</p> <p><b>Plaintiffs</b> [1] - 1:5</p> <p><b>PLAINTIFFS</b> [1] - 1:16</p> <p><b>plaintiffs'</b> [5] - 27:23, 35:13, 39:14, 64:18, 69:18</p> <p><b>plan</b> [6] - 4:21, 32:19, 48:2, 48:12, 49:2, 64:15</p> <p><b>planned</b> [1] - 9:16</p> <p><b>planning</b> [1] - 28:13</p> <p><b>plans</b> [3] - 4:6, 4:23, 6:23</p> <p><b>pleased</b> [1] - 65:2</p> <p><b>podium</b> [1] - 34:24</p> <p><b>point</b> [32] - 9:25, 10:11, 13:13, 14:6, 15:7, 17:24, 17:25, 18:2, 18:10, 20:24, 22:5, 29:12, 33:5, 33:7, 36:11, 36:17, 37:1, 37:13, 40:20, 42:23, 44:15, 44:18, 45:8, 45:9, 45:19, 47:4, 48:19, 54:24, 62:5, 71:23, 72:3, 72:13</p> <p><b>pointed</b> [2] - 47:2, 66:15</p>	<p><b>points</b> [4] - 11:1, 35:3, 35:10, 63:4</p> <p><b>poles</b> [3] - 43:5, 43:7, 43:9</p> <p><b>Police</b> [2] - 31:11, 68:9</p> <p><b>policies</b> [3] - 15:18, 22:2, 32:11</p> <p><b>policy</b> [10] - 15:15, 19:8, 22:4, 22:5, 46:13, 46:16, 47:12, 66:12, 67:5, 67:6</p> <p><b>political</b> [8] - 16:24, 20:15, 23:7, 28:2, 31:23, 46:13, 46:16, 47:12</p> <p><b>politician</b> [1] - 15:9</p> <p><b>politics</b> [1] - 21:16</p> <p><b>population</b> [3] - 65:11, 65:12, 65:25</p> <p><b>position</b> [3] - 4:25, 22:25, 56:14</p> <p><b>positioning</b> [1] - 59:13</p> <p><b>positive</b> [2] - 29:22, 58:19</p> <p><b>possession</b> [1] - 47:10</p> <p><b>possible</b> [14] - 9:18, 31:25, 35:2, 37:5, 37:10, 38:13, 38:22, 38:24, 40:22, 41:1, 41:4, 48:22, 53:5, 66:6</p> <p><b>post</b> [2] - 43:6, 43:9</p> <p><b>posting</b> [1] - 43:5</p> <p><b>posture</b> [3] - 26:11, 56:2, 57:16, 63:18, 63:21, 64:3, 64:4, 64:17</p> <p><b>potentially</b> [1] - 19:6</p> <p><b>power</b> [3] - 16:14, 17:2, 17:3</p> <p><b>practical</b> [1] - 54:23</p> <p><b>practice</b> [3] - 27:15, 43:11, 43:13</p> <p><b>practicing</b> [1] - 30:15</p> <p><b>Praise</b> [1] - 16:4</p> <p><b>pray</b> [2] - 13:25, 60:10</p> <p><b>praying</b> [1] - 60:3</p> <p><b>precisely</b> [2] - 31:1, 70:14</p> <p><b>prefer</b> [2] - 38:12, 39:15</p> <p><b>preference</b> [1] - 39:11</p> <p><b>preferential</b> [1] - 38:9</p> <p><b>preferentially</b> [3] -</p>	<p>66:10, 66:12, 66:15</p> <p><b>preliminary</b> [9] - 3:3, 35:20, 47:25, 50:22, 51:9, 52:7, 52:12, 52:14, 72:4</p> <p><b>premise</b> [1] - 26:7</p> <p><b>prepare</b> [1] - 59:11</p> <p><b>prepared</b> [2] - 8:5, 8:22</p> <p><b>prerogative</b> [1] - 67:12</p> <p><b>present</b> [3] - 8:9, 12:21, 41:6</p> <p><b>presented</b> [2] - 9:14, 40:15</p> <p><b>preservation</b> [1] - 64:10</p> <p><b>President</b> [1] - 52:17</p> <p><b>presumption</b> [5] - 14:25, 23:2, 23:5, 23:13, 23:18</p> <p><b>presumptive</b> [1] - 23:1</p> <p><b>presumptuous</b> [1] - 9:3</p> <p><b>pretense</b> [1] - 43:1</p> <p><b>pretext</b> [1] - 15:8</p> <p><b>pretextual</b> [1] - 15:8</p> <p><b>pretty</b> [1] - 28:21</p> <p><b>prevent</b> [3] - 19:4, 19:5, 25:11</p> <p><b>prevented</b> [1] - 43:5</p> <p><b>prey</b> [1] - 26:10</p> <p><b>prima</b> [2] - 9:12, 13:22</p> <p><b>privilege</b> [1] - 26:4</p> <p><b>problem</b> [5] - 21:11, 27:3, 27:22, 29:13, 40:13</p> <p><b>procedural</b> [7] - 26:11, 56:2, 57:3, 63:18, 64:3, 64:4, 64:17</p> <p><b>procedure</b> [1] - 21:5</p> <p><b>procedures</b> [1] - 13:2</p> <p><b>proceed</b> [1] - 43:18</p> <p><b>proceedings</b> [2] - 52:23, 73:2</p> <p><b>Proceedings</b> [1] - 1:24</p> <p><b>process</b> [4] - 13:20, 15:16, 17:4, 33:19</p> <p><b>produced</b> [1] - 1:25</p> <p><b>products</b> [1] - 37:12</p> <p><b>professionals</b> [1] - 25:16</p> <p><b>profound</b> [1] - 16:19</p> <p><b>program</b> [8] - 33:3, 40:7, 40:21, 41:7,</p>
<b>P</b>				
<p><b>Page</b> [4] - 45:5, 45:6, 45:7, 64:10</p> <p><b>page</b> [1] - 55:2</p> <p><b>pages</b> [1] - 44:23</p> <p><b>Pages</b> [1] - 44:24</p> <p><b>pain</b> [1] - 69:23</p> <p><b>palpably</b> [1] - 56:24</p> <p><b>pandemic</b> [2] - 21:17, 70:24</p> <p><b>panel</b> [1] - 52:18</p> <p><b>papers</b> [4] - 8:13, 22:12, 27:9, 27:14</p> <p><b>Paragraph</b> [4] - 6:2, 7:11, 7:13, 7:22</p> <p><b>paragraph</b> [1] - 52:7</p> <p><b>parameters</b> [1] - 32:13</p> <p><b>parishes</b> [1] - 19:12</p> <p><b>parishioners</b> [3] - 11:3, 46:21, 69:13</p> <p><b>Park</b> [2] - 22:20, 34:9</p> <p><b>park</b> [1] - 39:17</p> <p><b>parking</b> [1] - 39:18</p> <p><b>part</b> [3] - 48:22, 61:19, 65:3</p> <p><b>participate</b> [2] - 36:19, 46:22</p> <p><b>participated</b> [1] - 41:20</p> <p><b>participating</b> [3] - 11:20, 47:1, 54:25</p> <p><b>participation</b> [1] - 46:8</p> <p><b>particles</b> [1] - 39:8</p> <p><b>particular</b> [6] - 15:6, 35:15, 39:22, 43:2, 45:8, 57:8</p> <p><b>particularly</b> [3] - 4:1, 22:7, 49:21</p> <p><b>parties</b> [1] - 57:20</p>				

<p>42:18, 45:15, 47:23, 54:16</p> <p><b>programs</b> [4] - 34:2, 40:25, 42:13, 65:3</p> <p><b>progress</b> [2] - 34:15, 34:23</p> <p><b>prohibit</b> [2] - 56:6, 57:25</p> <p><b>prohibited</b> [2] - 17:14, 58:5</p> <p><b>prohibits</b> [1] - 56:5</p> <p><b>promise</b> [1] - 53:16</p> <p><b>promising</b> [1] - 15:2</p> <p><b>promulgation</b> [1] - 25:3</p> <p><b>proof</b> [1] - 25:19</p> <p><b>properly</b> [1] - 36:7</p> <p><b>property</b> [2] - 51:5, 60:19</p> <p><b>proposed</b> [1] - 8:13</p> <p><b>prosecutorial</b> [1] - 44:13</p> <p><b>prospectively</b> [1] - 41:22</p> <p><b>protect</b> [6] - 11:3, 58:17, 65:25, 66:5, 66:9, 69:12</p> <p><b>protected</b> [2] - 39:5, 51:21</p> <p><b>protecting</b> [2] - 36:7, 60:21</p> <p><b>protection</b> [1] - 20:23</p> <p><b>protections</b> [1] - 41:3</p> <p><b>protest</b> [3] - 35:15, 36:19, 46:8</p> <p><b>protestors</b> [5] - 41:24, 42:8, 42:10, 44:3, 46:3</p> <p><b>protests</b> [7] - 41:16, 42:4, 43:17, 43:18, 43:25, 44:10, 62:20</p> <p><b>proved</b> [1] - 62:4</p> <p><b>provided</b> [1] - 10:9</p> <p><b>providing</b> [1] - 19:14</p> <p><b>province</b> [1] - 59:24</p> <p><b>provision</b> [1] - 34:7</p> <p><b>proximity</b> [1] - 14:14</p> <p><b>public</b> [16] - 11:9, 13:2, 14:6, 14:7, 22:19, 42:14, 43:23, 44:4, 44:10, 46:11, 46:13, 46:19, 68:17, 71:11, 71:13</p> <p><b>purported</b> [1] - 36:17</p> <p><b>purpose</b> [3] - 33:6, 35:24</p> <p><b>purposes</b> [2] - 24:18, 62:22</p>	<p><b>pursuant</b> [1] - 26:25</p> <p><b>put</b> [11] - 11:1, 11:2, 15:18, 40:6, 44:15, 47:3, 54:15, 60:9, 65:4, 67:19</p> <p><b>puts</b> [3] - 48:19, 60:22, 60:23</p> <p><b>putting</b> [1] - 44:21</p> <p style="text-align: center;"><b>Q</b></p> <p><b>quarantine</b> [1] - 19:19</p> <p><b>quarantining</b> [1] - 19:9</p> <p><b>quasi</b> [1] - 31:8</p> <p><b>quasi-regulatory</b> [1] - 31:8</p> <p><b>questions</b> [9] - 3:11, 35:6, 41:13, 49:3, 49:6, 53:9, 53:11, 53:12, 55:5</p> <p><b>quick</b> [2] - 34:16, 37:20</p> <p><b>quickly</b> [4] - 11:20, 37:7, 37:9, 59:3</p> <p><b>quite</b> [5] - 32:23, 45:10, 58:12, 64:18, 67:8</p> <p><b>quo</b> [3] - 49:1, 64:11, 64:12</p> <p><b>quote</b> [1] - 27:10</p> <p style="text-align: center;"><b>R</b></p> <p><b>rain</b> [1] - 9:20</p> <p><b>raise</b> [1] - 15:14</p> <p><b>raised</b> [5] - 15:21, 33:7, 36:4, 41:16, 53:11</p> <p><b>raises</b> [2] - 18:2, 64:7</p> <p><b>Ralph</b> [1] - 7:8</p> <p><b>range</b> [1] - 19:15</p> <p><b>raring</b> [1] - 2:11</p> <p><b>rate</b> [3] - 33:25, 34:1, 67:4</p> <p><b>rates</b> [4] - 19:21, 72:2</p> <p><b>rather</b> [7] - 5:14, 11:20, 19:5, 22:4, 33:20, 49:10, 62:19</p> <p><b>rational</b> [47] - 12:16, 24:7, 28:18, 28:20, 28:23, 28:24, 29:7, 29:8, 29:12, 29:22, 29:23, 29:24, 30:4, 30:5, 31:5, 31:14, 33:8, 33:9, 37:1,</p>	<p>37:18, 37:25, 38:16, 39:10, 39:20, 39:23, 45:14, 60:1, 62:5, 62:7, 62:12, 62:17, 62:21, 62:24, 65:6, 66:8, 68:22, 69:17, 69:25, 70:1, 70:4, 71:9, 71:10, 71:18</p> <p><b>rationale</b> [6] - 12:22, 19:2, 19:8, 19:19, 59:2</p> <p><b>rationalization</b> [1] - 30:3</p> <p><b>rationality</b> [3] - 41:10, 47:21, 62:2</p> <p><b>reach</b> [1] - 40:22</p> <p><b>reached</b> [1] - 37:24</p> <p><b>reaches</b> [1] - 63:20</p> <p><b>reaching</b> [1] - 63:14</p> <p><b>react</b> [1] - 20:1</p> <p><b>reacting</b> [1] - 20:14</p> <p><b>read</b> [3] - 57:8, 62:8, 63:7</p> <p><b>reading</b> [1] - 62:10</p> <p><b>ready</b> [1] - 2:14</p> <p><b>real</b> [5] - 12:18, 14:14, 17:12, 17:13, 50:1</p> <p><b>realized</b> [1] - 19:16</p> <p><b>really</b> [27] - 3:20, 16:8, 17:20, 20:4, 27:7, 28:17, 32:1, 33:14, 43:1, 44:15, 46:5, 47:24, 48:8, 50:3, 55:2, 59:17, 60:17, 61:25, 62:1, 63:7, 64:18, 64:19, 65:24, 67:25, 72:8, 72:10, 72:11</p> <p><b>reason</b> [15] - 6:18, 6:25, 7:19, 10:2, 12:25, 18:20, 21:22, 23:6, 38:18, 38:23, 40:1, 43:21, 43:22, 46:15, 71:9</p> <p><b>reasonable</b> [3] - 19:17, 36:6, 62:9</p> <p><b>reasons</b> [3] - 39:10, 42:5, 69:14</p> <p><b>rebut</b> [1] - 42:17</p> <p><b>recognize</b> [1] - 22:6</p> <p><b>recognized</b> [1] - 61:18</p> <p><b>recollection</b> [1] - 53:1</p> <p><b>recommends</b> [1] - 38:21</p> <p><b>reconsidered</b> [1] - 67:13</p> <p><b>record</b> [27] - 3:9,</p>	<p>6:14, 9:5, 9:13, 10:5, 11:22, 12:18, 16:14, 26:13, 28:6, 44:23, 50:13, 50:17, 51:20, 51:23, 56:21, 56:22, 57:5, 57:11, 62:13, 63:17, 64:24, 67:20, 68:9, 73:2</p> <p><b>recorded</b> [1] - 1:24</p> <p><b>records</b> [3] - 56:3, 63:5, 65:22</p> <p><b>recreation</b> [1] - 34:10</p> <p><b>reduce</b> [2] - 65:21, 70:22</p> <p><b>reduction</b> [1] - 19:20</p> <p><b>refer</b> [3] - 3:22, 3:23, 22:16</p> <p><b>reference</b> [1] - 34:9</p> <p><b>references</b> [1] - 30:6</p> <p><b>referred</b> [1] - 49:15</p> <p><b>referring</b> [2] - 6:3, 60:5</p> <p><b>reflect</b> [1] - 63:7</p> <p><b>reflects</b> [1] - 38:10</p> <p><b>refused</b> [1] - 49:22</p> <p><b>regarding</b> [4] - 9:7, 18:18, 63:6, 67:7</p> <p><b>regardless</b> [5] - 24:21, 35:24, 39:21, 54:15</p> <p><b>regards</b> [1] - 6:11</p> <p><b>regime</b> [2] - 36:1, 36:5</p> <p><b>regular</b> [2] - 12:6, 22:16</p> <p><b>regularly</b> [1] - 6:5</p> <p><b>regulated</b> [1] - 23:15</p> <p><b>regulation</b> [2] - 12:21, 26:25</p> <p><b>regulations</b> [12] - 4:7, 5:19, 12:22, 13:13, 14:6, 24:16, 25:4, 52:2, 62:10, 62:11, 62:14, 62:17</p> <p><b>regulatory</b> [3] - 13:19, 31:7, 31:8</p> <p><b>reimpose</b> [1] - 29:16</p> <p><b>relate</b> [2] - 35:10, 55:13</p> <p><b>relates</b> [1] - 32:22</p> <p><b>relation</b> [1] - 67:7</p> <p><b>relationship</b> [1] - 44:1</p> <p><b>relative</b> [5] - 37:12, 37:16, 38:19, 38:20, 45:1</p> <p><b>relatively</b> [1] - 13:7</p> <p><b>relax</b> [2] - 34:21, 65:19</p>	<p><b>relaxation</b> [4] - 7:20, 8:7, 9:22, 28:3</p> <p><b>release</b> [1] - 29:13</p> <p><b>released</b> [1] - 39:8</p> <p><b>relevant</b> [4] - 28:17, 42:22, 54:21, 65:22</p> <p><b>relief</b> [11] - 10:3, 15:2, 17:7, 35:20, 42:8, 51:4, 51:11, 64:5, 64:6, 64:22, 68:17</p> <p><b>religion</b> [5] - 9:13, 25:5, 38:6, 43:15, 43:21</p> <p><b>religions</b> [1] - 24:20</p> <p><b>religious</b> [59] - 4:8, 4:19, 6:11, 12:20, 15:13, 16:12, 20:25, 24:8, 24:9, 24:17, 24:21, 24:22, 27:1, 27:16, 27:25, 32:22, 32:23, 32:25, 33:24, 34:8, 38:4, 38:8, 38:12, 39:15, 39:17, 42:21, 42:22, 43:2, 43:3, 43:11, 43:13, 44:12, 44:17, 45:11, 45:13, 55:8, 55:13, 55:15, 55:18, 57:24, 58:4, 66:1, 66:5, 66:9, 68:4, 68:6, 68:21, 68:22, 68:25, 69:3, 69:6, 69:10, 69:14, 70:24, 71:5</p> <p><b>reluctance</b> [3] - 29:15, 30:22, 53:4</p> <p><b>remain</b> [1] - 70:2</p> <p><b>remedies</b> [1] - 46:4</p> <p><b>reminds</b> [1] - 23:23</p> <p><b>remove</b> [1] - 24:17</p> <p><b>removing</b> [2] - 17:8, 69:14</p> <p><b>reopen</b> [2] - 41:1, 46:2</p> <p><b>reopening</b> [11] - 4:15, 4:21, 32:19, 33:20, 41:2, 48:2, 48:4, 48:12, 48:22, 49:2, 64:15</p> <p><b>reopenings</b> [2] - 34:6, 34:16</p> <p><b>repeatedly</b> [1] - 50:7</p> <p><b>reply</b> [2] - 9:4, 52:13</p> <p><b>Reporter</b> [2] - 1:22, 73:4</p> <p><b>reporter</b> [1] - 2:11</p> <p><b>Reporter/Transcriber</b> [1] - 73:5</p> <p><b>represent</b> [2] - 4:20, 6:14</p>
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<p><b>represented</b> [1] - 51:5</p> <p><b>represents</b> [1] - 30:3</p> <p><b>request</b> [1] - 50:15</p> <p><b>requested</b> [1] - 67:18</p> <p><b>requesting</b> [1] - 10:3</p> <p><b>require</b> [4] - 14:16, 55:20, 58:20, 68:3</p> <p><b>required</b> [3] - 58:14, 58:16, 67:17</p> <p><b>requirement</b> [2] - 26:3, 43:16</p> <p><b>requirements</b> [3] - 25:23, 61:9, 62:23</p> <p><b>requires</b> [5] - 30:8, 34:21, 50:11, 58:20, 58:22</p> <p><b>residents</b> [4] - 20:10, 36:7, 46:20, 54:2</p> <p><b>resolves</b> [1] - 64:19</p> <p><b>respect</b> [13] - 8:21, 11:8, 13:23, 19:1, 19:18, 22:18, 25:3, 30:25, 36:20, 52:1, 54:22, 67:5, 67:6</p> <p><b>respective</b> [2] - 61:21, 62:3</p> <p><b>respects</b> [1] - 67:11</p> <p><b>respond</b> [4] - 15:17, 35:4, 53:10, 65:18</p> <p><b>responding</b> [1] - 41:19</p> <p><b>response</b> [6] - 9:21, 14:11, 19:17, 28:16, 52:13, 63:1</p> <p><b>rest</b> [1] - 19:4</p> <p><b>RESTRAINING</b> [1] - 1:5</p> <p><b>restraining</b> [1] - 16:1</p> <p><b>restraint</b> [2] - 30:25, 67:3</p> <p><b>restrict</b> [1] - 11:9</p> <p><b>restriction</b> [1] - 39:16</p> <p><b>restrictions</b> [14] - 9:8, 11:18, 11:21, 15:8, 17:22, 19:2, 22:8, 29:17, 32:21, 33:4, 33:20, 34:21, 36:23, 65:20</p> <p><b>result</b> [2] - 27:15, 68:16</p> <p><b>retail</b> [9] - 24:13, 29:21, 36:9, 36:25, 56:9, 56:16, 70:2, 71:5, 71:9</p> <p><b>retrospect</b> [1] - 69:20</p> <p><b>returns</b> [1] - 12:23</p> <p><b>reverse</b> [1] - 53:4</p>	<p><b>reversed</b> [2] - 52:24, 63:19</p> <p><b>review</b> [6] - 4:21, 50:10, 50:17, 51:15, 68:14, 68:23</p> <p><b>reviewed</b> [1] - 5:4</p> <p><b>reviewing</b> [3] - 50:10, 50:16, 63:11</p> <p><b>revise</b> [1] - 4:7</p> <p><b>ribbons</b> [1] - 43:8</p> <p><b>rife</b> [1] - 50:22</p> <p><b>Rights</b> [1] - 16:17</p> <p><b>rights</b> [11] - 13:23, 14:18, 14:19, 26:4, 27:23, 49:21, 58:15, 58:17, 60:21, 70:12, 71:13</p> <p><b>risk</b> [7] - 20:12, 38:14, 39:14, 41:8, 42:14, 66:16, 66:18</p> <p><b>risked</b> [1] - 40:11</p> <p><b>risks</b> [3] - 37:16, 39:18, 46:19</p> <p><b>risky</b> [1] - 41:10</p> <p><b>ROAD</b> [1] - 1:15</p> <p><b>ROBERT</b> [1] - 1:12</p> <p><b>Roberts</b> [11] - 26:9, 27:11, 27:12, 29:1, 29:25, 30:24, 55:11, 56:13, 56:19, 56:23, 57:8</p> <p><b>robust</b> [2] - 47:22, 66:5</p> <p><b>Ronald</b> [1] - 2:19</p> <p><b>RONALD</b> [1] - 1:15</p> <p><b>roofs</b> [1] - 11:2</p> <p><b>room</b> [4] - 6:24, 39:22, 40:14, 41:6</p> <p><b>Roseland</b> [1] - 2:20</p> <p><b>route</b> [1] - 18:8</p> <p><b>Rule</b> [2] - 50:4, 68:11</p> <p><b>rule</b> [6] - 13:1, 14:22, 27:6, 36:7, 59:23, 60:5</p> <p><b>rule-making</b> [1] - 13:1</p> <p><b>rules</b> [12] - 5:23, 7:20, 9:23, 15:11, 33:21, 35:11, 35:14, 42:20, 43:19, 45:12, 54:1, 61:12</p> <p><b>ruling</b> [1] - 67:16</p> <p><b>Rumson</b> [1] - 45:4</p> <p><b>run</b> [2] - 31:23, 46:16</p> <p><b>running</b> [1] - 20:22</p>	<p><b>S</b></p> <p><b>sabbath</b> [1] - 43:11</p> <p><b>safeguarding</b> [1] - 54:3</p> <p><b>safer</b> [1] - 38:18</p> <p><b>safety</b> [6] - 14:7, 42:14, 43:23, 44:4, 44:10, 52:1</p> <p><b>salary</b> [1] - 69:24</p> <p><b>SALSBURG</b> [1] - 1:14</p> <p><b>Salsburg</b> [1] - 2:20</p> <p><b>sanctuaries</b> [2] - 9:18, 60:8</p> <p><b>sanctuary</b> [5] - 5:14, 6:24, 10:17, 26:6, 26:7</p> <p><b>Satan</b> [1] - 25:11</p> <p><b>satisfy</b> [1] - 9:14</p> <p><b>savoring</b> [1] - 43:21</p> <p><b>saw</b> [4] - 11:18, 19:11, 44:5, 63:13</p> <p><b>schedule</b> [1] - 50:14</p> <p><b>scheme</b> [2] - 31:7, 31:8</p> <p><b>science</b> [7] - 21:15, 21:24, 33:1, 33:15, 40:2, 40:3, 65:5</p> <p><b>scientists</b> [2] - 21:21, 22:1</p> <p><b>scramble</b> [1] - 21:21</p> <p><b>screw</b> [1] - 25:10</p> <p><b>se</b> [1] - 56:16</p> <p><b>seat</b> [3] - 5:14, 10:17, 26:6</p> <p><b>Second</b> [2] - 47:15, 53:6</p> <p><b>second</b> [4] - 30:23, 35:12, 36:10, 38:2</p> <p><b>sect</b> [1] - 43:3</p> <p><b>Section</b> [1] - 25:7</p> <p><b>secular</b> [5] - 38:8, 38:10, 44:12, 45:1, 45:14</p> <p><b>see</b> [17] - 2:10, 4:15, 12:3, 12:5, 12:22, 14:12, 16:25, 17:14, 26:16, 27:8, 34:3, 34:16, 48:16, 51:7, 56:19, 63:24, 68:10</p> <p><b>seeing</b> [2] - 29:2, 42:15</p> <p><b>seek</b> [3] - 20:22, 52:10, 52:14</p> <p><b>seeking</b> [3] - 8:7, 23:10, 42:8</p> <p><b>seem</b> [5] - 24:7, 31:13, 53:3, 54:12, 69:21</p> <p><b>sees</b> [1] - 50:14</p> <p><b>selective</b> [11] - 36:18, 42:18, 42:23, 42:25, 43:20, 45:17,</p>	<p>45:21, 46:4, 53:23, 60:16, 62:18</p> <p><b>seminar</b> [1] - 39:25</p> <p><b>Senator</b> [1] - 15:23</p> <p><b>sense</b> [7] - 17:13, 60:13, 61:13, 61:14, 61:15, 69:21</p> <p><b>sensible</b> [2] - 36:7, 44:13</p> <p><b>serious</b> [2] - 41:7, 44:4</p> <p><b>seriously</b> [1] - 34:21</p> <p><b>serve</b> [2] - 8:25, 19:12</p> <p><b>serves</b> [1] - 40:14</p> <p><b>service</b> [9] - 7:3, 7:12, 12:18, 37:6, 39:25, 42:2, 56:18, 59:5, 59:6</p> <p><b>services</b> [45] - 4:8, 5:20, 6:11, 7:13, 7:23, 9:10, 10:21, 10:25, 12:6, 12:20, 16:6, 16:12, 19:14, 19:15, 19:16, 21:10, 24:9, 24:11, 24:15, 27:1, 31:13, 32:22, 32:23, 32:25, 33:22, 33:23, 33:24, 34:8, 38:4, 39:17, 56:16, 58:4, 60:4, 68:4, 68:25, 69:6, 69:7, 69:11, 70:25, 71:6</p> <p><b>set</b> [4] - 22:3, 43:17, 45:23, 68:1</p> <p><b>settings</b> [1] - 55:18</p> <p><b>Shabbat</b> [1] - 43:11</p> <p><b>Shabbos</b> [1] - 59:12</p> <p><b>share</b> [1] - 17:17</p> <p><b>shelf</b> [1] - 28:11</p> <p><b>shop</b> [1] - 59:3</p> <p><b>shopping</b> [8] - 26:14, 27:19, 36:25, 56:7, 56:8, 56:11, 59:13, 60:2</p> <p><b>ShopRite</b> [2] - 26:15, 59:10</p> <p><b>shore</b> [1] - 27:20</p> <p><b>short</b> [2] - 17:7, 26:10</p> <p><b>shorter</b> [2] - 37:4, 59:10</p> <p><b>shots</b> [1] - 12:16</p> <p><b>shoulder</b> [4] - 11:19, 29:3, 29:4</p> <p><b>show</b> [5] - 39:6, 50:4, 59:8, 64:19, 70:18</p> <p><b>showing</b> [4] - 48:6, 51:24, 52:15, 68:14</p> <p><b>shown</b> [2] - 56:24,</p>	<p>71:10</p> <p><b>shows</b> [3] - 34:12, 42:24, 51:20</p> <p><b>shut</b> [1] - 69:4</p> <p><b>shy</b> [1] - 3:13</p> <p><b>sic</b> [1] - 43:21</p> <p><b>sick</b> [1] - 19:4</p> <p><b>sickness</b> [1] - 19:22</p> <p><b>side</b> [2] - 2:8, 3:10</p> <p><b>sides</b> [3] - 3:18, 49:8, 68:11</p> <p><b>signals</b> [1] - 54:18</p> <p><b>significance</b> [2] - 27:23, 58:19</p> <p><b>significant</b> [6] - 33:14, 35:18, 38:17, 40:24, 48:7, 48:9</p> <p><b>significantly</b> [3] - 32:20, 47:21, 65:19</p> <p><b>silence</b> [1] - 15:21</p> <p><b>silent</b> [1] - 13:17</p> <p><b>similar</b> [3] - 51:25, 55:12, 57:4</p> <p><b>simply</b> [3] - 33:20, 41:6, 42:6</p> <p><b>sincerely</b> [1] - 68:5</p> <p><b>singing</b> [2] - 30:10, 30:20</p> <p><b>single</b> [5] - 37:3, 37:4, 42:1, 42:4, 49:14</p> <p><b>singled</b> [2] - 58:4, 58:8</p> <p><b>sings</b> [1] - 39:9</p> <p><b>sit</b> [2] - 21:7, 48:2</p> <p><b>sitting</b> [10] - 21:6, 21:8, 25:15, 28:11, 28:12, 30:14, 30:16, 30:17, 30:18, 30:19</p> <p><b>situated</b> [1] - 45:24</p> <p><b>situation</b> [1] - 65:10</p> <p><b>situations</b> [1] - 71:21</p> <p><b>six</b> [7] - 10:21, 19:13, 30:19, 39:2, 39:4, 54:3, 55:16</p> <p><b>six-week</b> [1] - 19:13</p> <p><b>size</b> [1] - 54:15</p> <p><b>skeptical</b> [1] - 23:6</p> <p><b>slightly</b> [1] - 46:10</p> <p><b>slow</b> [2] - 59:7, 60:3</p> <p><b>slowly</b> [1] - 3:5</p> <p><b>small</b> [4] - 13:7, 16:5, 67:7</p> <p><b>smaller</b> [4] - 7:3, 9:18, 12:20, 13:24</p> <p><b>smart</b> [1] - 14:15</p> <p><b>smoking</b> [2] - 25:8, 28:5</p> <p><b>snapshot</b> [1] - 62:14</p> <p><b>sneezes</b> [1] - 39:9</p>
--	--	--	---	---



<p><b>social</b> <sup>[15]</sup> - 3:8, 5:14, 5:23, 11:11, 15:11, 19:16, 25:23, 27:17, 38:24, 41:3, 53:24, 54:1, 54:4, 56:17, 62:23</p> <p><b>society</b> <sup>[1]</sup> - 46:17</p> <p><b>solicitous</b> <sup>[1]</sup> - 32:23</p> <p><b>someone</b> <sup>[9]</sup> - 25:10, 37:5, 37:10, 39:5, 39:9, 45:22, 45:25, 46:1, 60:18</p> <p><b>sometimes</b> <sup>[3]</sup> - 14:12, 51:6, 54:8</p> <p><b>somewhat</b> <sup>[1]</sup> - 67:23</p> <p><b>soon</b> <sup>[1]</sup> - 18:7</p> <p><b>sophisticated</b> <sup>[2]</sup> - 25:15, 54:16</p> <p><b>sorry</b> <sup>[2]</sup> - 6:3, 54:14</p> <p><b>sort</b> <sup>[7]</sup> - 20:15, 20:21, 33:15, 34:25, 36:13, 36:14, 42:18</p> <p><b>sorts</b> <sup>[1]</sup> - 65:6</p> <p><b>sought</b> <sup>[4]</sup> - 55:14, 55:19, 64:23, 68:17</p> <p><b>sound</b> <sup>[1]</sup> - 60:1</p> <p><b>South</b> <sup>[20]</sup> - 35:5, 36:22, 38:12, 41:13, 48:14, 49:6, 49:7, 50:3, 55:6, 55:19, 55:22, 56:1, 56:4, 64:19, 64:20, 64:21, 65:23, 66:4, 66:15, 71:15</p> <p><b>sovereigns</b> <sup>[1]</sup> - 21:2</p> <p><b>space</b> <sup>[3]</sup> - 13:24, 61:5</p> <p><b>spaces</b> <sup>[2]</sup> - 38:18, 39:21</p> <p><b>speaks</b> <sup>[2]</sup> - 15:24, 28:25</p> <p><b>special</b> <sup>[1]</sup> - 71:20</p> <p><b>specific</b> <sup>[8]</sup> - 4:10, 4:11, 4:18, 4:23, 43:25, 46:8, 53:9</p> <p><b>specifically</b> <sup>[5]</sup> - 38:21, 43:12, 58:9, 63:11, 69:13</p> <p><b>spectacle</b> <sup>[1]</sup> - 44:2</p> <p><b>spectrum</b> <sup>[1]</sup> - 43:14</p> <p><b>speech</b> <sup>[2]</sup> - 31:12, 42:19</p> <p><b>speeding</b> <sup>[2]</sup> - 47:5, 47:7</p> <p><b>spend</b> <sup>[3]</sup> - 26:12, 61:2</p> <p><b>spending</b> <sup>[1]</sup> - 53:5</p> <p><b>spent</b> <sup>[1]</sup> - 12:7</p> <p><b>spike</b> <sup>[1]</sup> - 19:7</p>	<p><b>spikes</b> <sup>[4]</sup> - 27:15, 34:16, 42:15, 48:16</p> <p><b>spiritual</b> <sup>[1]</sup> - 58:18</p> <p><b>split</b> <sup>[1]</sup> - 64:21</p> <p><b>sporting</b> <sup>[2]</sup> - 58:1, 71:7</p> <p><b>spread</b> <sup>[11]</sup> - 19:22, 25:2, 33:2, 34:2, 38:13, 39:2, 41:9, 65:14, 65:20, 66:17, 66:19</p> <p><b>spreading</b> <sup>[1]</sup> - 40:11</p> <p><b>Stadium</b> <sup>[2]</sup> - 61:5</p> <p><b>stage</b> <sup>[8]</sup> - 12:12, 35:20, 48:1, 48:25, 63:21, 63:25, 66:19, 66:20</p> <p><b>staggered</b> <sup>[1]</sup> - 61:10</p> <p><b>stand</b> <sup>[2]</sup> - 36:23, 64:3</p> <p><b>standard</b> <sup>[10]</sup> - 14:17, 15:12, 49:19, 50:2, 50:3, 50:11, 50:21, 51:19, 63:4, 63:6</p> <p><b>standards</b> <sup>[7]</sup> - 50:1, 50:22, 52:6, 52:8, 52:9, 64:13</p> <p><b>standing</b> <sup>[1]</sup> - 34:23</p> <p><b>start</b> <sup>[5]</sup> - 2:17, 2:18, 3:2, 3:25, 5:10</p> <p><b>started</b> <sup>[3]</sup> - 2:14, 61:14, 65:20</p> <p><b>starting</b> <sup>[3]</sup> - 16:17, 34:16, 48:16</p> <p><b>state</b> <sup>[24]</sup> - 10:2, 12:23, 12:24, 13:3, 18:19, 24:13, 27:25, 33:12, 34:20, 36:6, 41:17, 47:5, 47:8, 47:10, 55:12, 58:8, 58:13, 61:19, 62:6, 62:12, 64:15, 65:18, 67:1, 70:7</p> <p><b>State</b> <sup>[98]</sup> - 2:9, 3:23, 3:25, 4:20, 4:24, 9:14, 10:9, 11:1, 11:7, 11:24, 12:19, 12:24, 13:10, 14:2, 14:16, 15:1, 15:2, 17:10, 18:2, 18:5, 18:10, 18:22, 19:18, 19:25, 20:18, 22:13, 22:15, 22:16, 22:21, 23:13, 25:18, 25:24, 26:9, 26:21, 26:25, 27:4, 27:5, 27:8, 27:14, 27:22, 29:5, 29:6, 29:7, 29:14, 31:11, 31:18, 32:10, 32:18,</p>	<p>32:20, 32:23, 33:19, 34:11, 34:12, 35:1, 39:11, 39:15, 40:9, 40:21, 41:9, 42:20, 45:23, 47:8, 47:20, 48:11, 48:19, 48:21, 53:10, 53:18, 53:21, 54:2, 54:13, 54:17, 56:4, 57:23, 58:14, 58:15, 58:20, 58:21, 58:22, 59:21, 59:24, 66:17, 67:7, 68:7, 68:9, 69:4, 69:5, 69:6, 69:18, 69:20, 70:4, 70:10, 70:15, 70:21, 71:2, 71:10, 71:23</p> <p><b>State's</b> <sup>[17]</sup> - 5:18, 12:14, 15:3, 15:5, 19:24, 20:14, 28:16, 30:3, 36:1, 37:22, 38:10, 54:1, 60:16, 60:20, 61:4, 63:1, 70:19</p> <p><b>state's</b> <sup>[2]</sup> - 46:14, 48:14</p> <p><b>statement</b> <sup>[2]</sup> - 24:25, 25:3</p> <p><b>statements</b> <sup>[2]</sup> - 15:23, 23:7</p> <p><b>States</b> <sup>[2]</sup> - 52:16, 52:17</p> <p><b>states</b> <sup>[10]</sup> - 4:16, 37:2, 37:14, 37:18, 47:6, 52:1, 58:9, 62:3, 66:8, 69:8</p> <p><b>STATES</b> <sup>[2]</sup> - 1:1, 1:12</p> <p><b>status</b> <sup>[4]</sup> - 48:5, 49:1, 64:11, 64:12</p> <p><b>stay</b> <sup>[3]</sup> - 26:15, 26:16, 27:13</p> <p><b>stenography</b> <sup>[1]</sup> - 1:24</p> <p><b>step</b> <sup>[2]</sup> - 33:21</p> <p><b>steps</b> <sup>[2]</sup> - 34:17, 35:1</p> <p><b>still</b> <sup>[18]</sup> - 9:8, 12:4, 15:5, 18:21, 21:8, 27:8, 27:21, 34:24, 39:20, 40:5, 42:13, 42:14, 56:9, 57:25, 58:5, 62:16, 71:6</p> <p><b>stop</b> <sup>[2]</sup> - 3:16, 35:6</p> <p><b>stopping</b> <sup>[3]</sup> - 3:13, 29:17, 45:19</p> <p><b>stopwatch</b> <sup>[1]</sup> - 14:9</p> <p><b>store</b> <sup>[6]</sup> - 11:19, 14:10, 26:13, 36:20, 37:1, 37:4</p> <p><b>stores</b> <sup>[9]</sup> - 14:22,</p>	<p>24:13, 36:10, 37:19, 56:9, 59:1, 70:2, 71:9</p> <p><b>STREET</b> <sup>[1]</sup> - 1:18</p> <p><b>Streets</b> <sup>[1]</sup> - 1:9</p> <p><b>strict</b> <sup>[3]</sup> - 5:23, 28:3, 62:23</p> <p><b>strike</b> <sup>[1]</sup> - 16:11</p> <p><b>strikes</b> <sup>[1]</sup> - 69:24</p> <p><b>striking</b> <sup>[1]</sup> - 65:17</p> <p><b>stringent</b> <sup>[1]</sup> - 65:25</p> <p><b>strokes</b> <sup>[1]</sup> - 61:12</p> <p><b>strong</b> <sup>[2]</sup> - 24:25, 39:11</p> <p><b>studies</b> <sup>[5]</sup> - 11:25, 12:3, 30:6, 33:17, 39:6</p> <p><b>study</b> <sup>[1]</sup> - 36:2</p> <p><b>stuff</b> <sup>[2]</sup> - 21:19, 56:10</p> <p><b>subject</b> <sup>[4]</sup> - 11:17, 22:7, 22:8, 68:22</p> <p><b>submission</b> <sup>[1]</sup> - 23:4</p> <p><b>submit</b> <sup>[7]</sup> - 11:15, 15:4, 17:24, 22:24, 24:25, 29:25, 67:13</p> <p><b>submitted</b> <sup>[3]</sup> - 11:24, 13:8, 22:10</p> <p><b>substitute</b> <sup>[1]</sup> - 54:4</p> <p><b>success</b> <sup>[2]</sup> - 68:13, 70:9</p> <p><b>successfully</b> <sup>[1]</sup> - 68:4</p> <p><b>sufficient</b> <sup>[5]</sup> - 12:12, 16:15, 18:18, 27:5, 28:3</p> <p><b>sufficiently</b> <sup>[2]</sup> - 13:23, 15:10</p> <p><b>suggest</b> <sup>[2]</sup> - 8:22, 36:5</p> <p><b>suggested</b> <sup>[5]</sup> - 29:14, 47:1, 48:7, 48:13, 66:4</p> <p><b>suggesting</b> <sup>[2]</sup> - 7:11, 38:5</p> <p><b>suggestion</b> <sup>[4]</sup> - 12:9, 43:15, 43:17, 44:11</p> <p><b>suggests</b> <sup>[3]</sup> - 42:19, 64:19, 65:24</p> <p><b>SUITE</b> <sup>[1]</sup> - 1:15</p> <p><b>summonses</b> <sup>[1]</sup> - 44:3</p> <p><b>sun</b> <sup>[1]</sup> - 11:4</p> <p><b>Sunday</b> <sup>[6]</sup> - 5:8, 6:11, 7:15, 10:18, 10:22, 60:11</p> <p><b>Sundays</b> <sup>[2]</sup> - 6:6, 7:14</p> <p><b>sunlight</b> <sup>[1]</sup> - 39:6</p>	<p><b>Superintendent</b> <sup>[1]</sup> - 68:9</p> <p><b>supermarket</b> <sup>[1]</sup> - 26:19</p> <p><b>supplement</b> <sup>[1]</sup> - 9:5</p> <p><b>supplementary</b> <sup>[1]</sup> - 23:4</p> <p><b>supplementing</b> <sup>[1]</sup> - 6:14</p> <p><b>support</b> <sup>[3]</sup> - 33:14, 35:20, 55:17</p> <p><b>supported</b> <sup>[1]</sup> - 61:16</p> <p><b>supposed</b> <sup>[4]</sup> - 15:19, 24:16, 26:4, 54:18</p> <p><b>Supreme</b> <sup>[20]</sup> - 36:23, 49:10, 49:20, 49:25, 50:8, 50:24, 51:13, 51:16, 52:16, 55:9, 55:23, 57:1, 57:15, 59:18, 63:11, 63:14, 63:20, 64:2, 64:4, 67:15</p> <p><b>surprising</b> <sup>[1]</sup> - 57:7</p> <p><b>surrender</b> <sup>[1]</sup> - 17:1</p> <p><b>survive</b> <sup>[1]</sup> - 10:8</p> <p><b>suspect</b> <sup>[1]</sup> - 28:4</p> <p><b>Sweeney</b> <sup>[1]</sup> - 15:23</p> <p><b>synagogues</b> <sup>[1]</sup> - 59:7</p> <p><b>system</b> <sup>[4]</sup> - 38:25, 39:1, 39:5, 50:10</p> <p><b>systemic</b> <sup>[1]</sup> - 21:11</p> <p><b>systems</b> <sup>[1]</sup> - 41:11</p>
<b>T</b>				
			<p><b>talismanic</b> <sup>[1]</sup> - 39:3</p> <p><b>talks</b> <sup>[3]</sup> - 27:14, 39:9, 49:19</p> <p><b>tape</b> <sup>[1]</sup> - 26:18</p> <p><b>targeted</b> <sup>[1]</sup> - 43:16</p> <p><b>tarps</b> <sup>[2]</sup> - 11:2, 69:12</p> <p><b>task</b> <sup>[1]</sup> - 13:4</p> <p><b>taught</b> <sup>[1]</sup> - 30:25</p> <p><b>team</b> <sup>[1]</sup> - 61:19</p> <p><b>technology</b> <sup>[3]</sup> - 3:6, 59:13</p> <p><b>telegraphing</b> <sup>[1]</sup> - 64:1</p> <p><b>telephone</b> <sup>[3]</sup> - 43:5, 43:6, 43:9</p> <p><b>TEMPORARY</b> <sup>[1]</sup> - 1:5</p> <p><b>ten</b> <sup>[1]</sup> - 48:9</p> <p><b>Tenafly</b> <sup>[3]</sup> - 42:24, 43:4, 43:12</p> <p><b>tend</b> <sup>[1]</sup> - 37:19</p>	

<p><b>tenets</b> [1] - 33:10</p> <p><b>tenors</b> [1] - 30:17</p> <p><b>tent</b> [2] - 11:1, 21:11</p> <p><b>tents</b> [2] - 11:11, 69:12</p> <p><b>term</b> [2] - 33:17, 68:5</p> <p><b>terms</b> [5] - 6:20, 20:7, 29:11, 55:2, 60:15</p> <p><b>terrific</b> [3] - 3:18, 71:16, 72:7</p> <p><b>test</b> [1] - 39:23</p> <p><b>tested</b> [5] - 14:13, 14:15, 14:21, 62:24</p> <p><b>testing</b> [4] - 15:12, 33:3, 40:8, 66:20</p> <p><b>text</b> [1] - 35:23</p> <p><b>texting</b> [1] - 59:12</p> <p><b>thankfully</b> [1] - 44:5</p> <p><b>THE</b> [66] - 1:1, 1:12, 1:17, 1:20, 2:3, 2:7, 2:10, 2:13, 2:17, 2:21, 3:2, 3:20, 4:23, 5:2, 5:10, 5:25, 6:5, 6:8, 6:22, 7:5, 7:11, 7:17, 7:22, 7:25, 8:12, 8:15, 10:6, 10:14, 10:21, 15:14, 15:21, 16:8, 17:16, 18:2, 21:14, 22:1, 23:22, 28:7, 28:16, 30:9, 30:12, 31:15, 31:18, 31:23, 32:1, 32:4, 32:6, 35:8, 49:5, 49:12, 52:21, 53:7, 53:12, 54:8, 55:6, 56:8, 57:22, 58:3, 61:17, 61:23, 63:1, 66:21, 67:19, 72:7, 72:10, 72:15</p> <p><b>theaters</b> [5] - 58:1, 58:18, 58:21, 60:23, 61:1</p> <p><b>themselves</b> [6] - 23:15, 29:10, 35:21, 38:17, 42:5, 62:23</p> <p><b>there'll</b> [2] - 30:20</p> <p><b>therefore</b> [1] - 5:20</p> <p><b>they've</b> [9] - 6:16, 14:13, 15:25, 24:12, 26:22, 57:6, 58:4</p> <p><b>thinks</b> [1] - 35:4</p> <p><b>Third</b> [1] - 64:8</p> <p><b>third</b> [3] - 7:12, 35:15, 36:11</p> <p><b>thoughtfully</b> [1] - 34:22</p> <p><b>thousand</b> [3] - 10:17, 26:6, 40:15</p> <p><b>thousands</b> [2] - 54:7, 54:24</p>	<p><b>three</b> [8] - 12:24, 13:8, 18:9, 20:18, 35:9, 36:8, 68:14, 70:14</p> <p><b>throughout</b> [1] - 23:24</p> <p><b>throw</b> [1] - 15:18</p> <p><b>tickets</b> [1] - 44:3</p> <p><b>timing</b> [1] - 67:14</p> <p><b>today</b> [4] - 33:9, 60:7, 64:25, 65:8</p> <p><b>together</b> [8] - 29:4, 30:17, 30:18, 37:22, 40:6, 41:24, 45:6, 60:10</p> <p><b>tolerated</b> [1] - 22:22</p> <p><b>took</b> [4] - 2:1, 20:8, 45:4, 53:25</p> <p><b>top</b> [2] - 36:14, 72:8</p> <p><b>total</b> [1] - 69:21</p> <p><b>touch</b> [2] - 35:16, 46:7</p> <p><b>touched</b> [1] - 46:9</p> <p><b>touché</b> [1] - 61:23</p> <p><b>tough</b> [1] - 30:18</p> <p><b>toward</b> [1] - 9:13</p> <p><b>towards</b> [3] - 25:24, 25:25, 60:21</p> <p><b>tracers</b> [1] - 40:17</p> <p><b>tracing</b> [15] - 33:3, 34:2, 40:7, 40:8, 40:21, 40:25, 41:7, 42:13, 47:23, 54:16, 54:21, 54:23, 55:1, 66:20, 71:1</p> <p><b>track</b> [1] - 54:17</p> <p><b>tradition</b> [1] - 20:25</p> <p><b>transcript</b> [2] - 1:24, 73:1</p> <p><b>transcription</b> [1] - 1:25</p> <p><b>transmission</b> [1] - 37:16</p> <p><b>travel</b> [1] - 63:13</p> <p><b>traveling</b> [2] - 24:9, 69:5</p> <p><b>treat</b> [2] - 23:15, 51:20</p> <p><b>treated</b> [3] - 51:21, 66:13, 66:15</p> <p><b>treating</b> [3] - 66:9, 66:10, 66:11</p> <p><b>treatment</b> [7] - 25:20, 36:3, 36:10, 36:11, 38:3, 38:9</p> <p><b>tremendous</b> [1] - 34:14</p> <p><b>trend</b> [3] - 24:13, 24:19, 69:9</p> <p><b>Trenton</b> [1] - 25:21</p>	<p><b>TRENTON</b> [1] - 1:19</p> <p><b>trial</b> [3] - 50:25, 51:13, 52:15</p> <p><b>tried</b> [1] - 23:3</p> <p><b>trip</b> [1] - 59:13</p> <p><b>TRO</b> [2] - 52:6, 52:10</p> <p><b>trouble</b> [2] - 12:7, 12:8</p> <p><b>troubling</b> [1] - 53:20</p> <p><b>true</b> [12] - 4:12, 9:16, 21:18, 23:16, 33:15, 34:6, 34:8, 37:14, 39:24, 47:9, 53:22, 57:25</p> <p><b>trump</b> [1] - 25:2</p> <p><b>trust</b> [2] - 53:13, 62:24</p> <p><b>trusted</b> [1] - 21:4</p> <p><b>truth</b> [1] - 23:10</p> <p><b>try</b> [1] - 35:2</p> <p><b>trying</b> [8] - 3:9, 27:25, 32:1, 37:11, 59:16, 60:15, 70:21, 71:23</p> <p><b>tuberculosis</b> [5] - 12:1, 12:2, 12:4, 30:6, 30:7</p> <p><b>turn</b> [7] - 29:16, 32:8, 36:16, 36:17, 41:15, 49:3, 69:17</p> <p><b>turned</b> [4] - 5:7, 21:18, 57:12, 67:8</p> <p><b>turns</b> [1] - 43:6</p> <p><b>two</b> [15] - 8:10, 13:8, 28:23, 37:11, 37:20, 48:3, 51:14, 53:16, 55:10, 57:12, 59:7, 62:11, 63:4, 68:13, 71:25</p> <p><b>typically</b> [1] - 22:18</p>	<p>58:15, 68:11, 68:19</p> <p><b>undermine</b> [1] - 32:24</p> <p><b>understandable</b> [2] - 50:9, 51:11</p> <p><b>understandings</b> [1] - 19:21</p> <p><b>understood</b> [3] - 8:14, 10:1, 57:20</p> <p><b>undisputed</b> [1] - 67:25</p> <p><b>unfolding</b> [1] - 44:22</p> <p><b>unfortunately</b> [3] - 34:18, 45:19, 51:4</p> <p><b>United</b> [2] - 52:16, 52:17</p> <p><b>UNITED</b> [2] - 1:1, 1:12</p> <p><b>unlike</b> [2] - 15:1, 69:7</p> <p><b>unlimited</b> [6] - 4:4, 14:23, 24:14, 33:24, 48:10, 69:11</p> <p><b>unprecedented</b> [1] - 70:24</p> <p><b>unreasonable</b> [1] - 67:9</p> <p><b>unrelated</b> [1] - 17:9</p> <p><b>unsurprisingly</b> [1] - 54:6</p> <p><b>unusual</b> [3] - 25:7, 51:8, 63:24</p> <p><b>up</b> [16] - 8:24, 11:1, 11:2, 17:22, 19:23, 33:23, 46:5, 47:22, 49:12, 49:13, 59:8, 59:11, 61:20, 61:22, 63:14</p> <p><b>update</b> [1] - 5:2</p> <p><b>upend</b> [1] - 49:1</p> <p><b>utilized</b> [1] - 21:5</p>	<p>38:8</p> <p><b>vested</b> [1] - 31:10</p> <p><b>view</b> [5] - 20:24, 33:8, 37:22, 52:2, 64:1</p> <p><b>vindication</b> [1] - 71:12</p> <p><b>Vineland</b> [1] - 6:22</p> <p><b>violation</b> [2] - 54:1, 70:12</p> <p><b>violations</b> [1] - 51:25</p> <p><b>virus</b> [1] - 39:8</p> <p><b>volumes</b> [2] - 15:24, 28:25</p> <p><b>vote</b> [1] - 49:16</p> <p><b>votes</b> [1] - 55:23</p>
<b>W</b>				
<p><b>wait</b> [1] - 18:14</p> <p><b>waited</b> [1] - 48:18</p> <p><b>waiting</b> [2] - 2:7, 2:10</p> <p><b>walk</b> [1] - 52:10</p> <p><b>walked</b> [2] - 26:24, 35:17</p> <p><b>wants</b> [5] - 11:10, 46:1, 46:2, 60:18, 66:17</p> <p><b>War</b> [2] - 25:21, 27:20</p> <p><b>weapons</b> [1] - 47:11</p> <p><b>wear</b> [4] - 21:18, 21:19, 45:25</p> <p><b>wearing</b> [2] - 11:21, 24:16</p> <p><b>weather</b> [4] - 5:7, 9:19, 27:2, 69:13</p> <p><b>weeds</b> [4] - 27:11, 27:18, 28:8</p> <p><b>week</b> [8] - 11:6, 13:11, 14:5, 16:19, 19:13, 22:21, 23:4, 63:19</p> <p><b>weekend</b> [2] - 5:6, 9:19</p> <p><b>weekly</b> [1] - 44:21</p> <p><b>weeks</b> [6] - 8:11, 13:8, 28:23, 48:3, 53:16, 57:12</p> <p><b>weighs</b> [2] - 27:12, 27:13</p> <p><b>welcomes</b> [1] - 42:20</p> <p><b>welfare</b> [1] - 18:22</p> <p><b>well-written</b> [1] - 3:21</p> <p><b>whatsoever</b> [9] - 17:10, 17:23, 24:20, 26:13, 29:16, 53:4, 55:14, 68:5, 69:2</p>				
<b>U</b>				
<p><b>U.S</b> [1] - 1:9</p> <p><b>ultimately</b> [1] - 33:13</p> <p><b>unable</b> [1] - 19:12</p> <p><b>uncertain</b> [2] - 33:1, 65:5</p> <p><b>uncertainty</b> [1] - 18:17</p> <p><b>uncommon</b> [1] - 49:10</p> <p><b>unconstitutional</b> [1] - 51:17</p> <p><b>under</b> [21] - 4:3, 4:7, 5:23, 8:9, 8:15, 10:4, 17:5, 17:25, 18:5, 21:11, 35:17, 41:18, 41:22, 42:9, 44:20, 47:14, 47:19, 52:12,</p>				
<b>V</b>				
<p><b>vagueness</b> [1] - 31:9</p> <p><b>valid</b> [2] - 9:8, 23:5</p> <p><b>validity</b> [9] - 23:1, 23:2, 23:8, 23:13, 35:11, 35:13, 35:22, 46:12, 47:14</p> <p><b>value</b> [1] - 17:18</p> <p><b>VANELLA</b> [1] - 1:17</p> <p><b>VANNELLA</b> [4] - 2:8, 2:16, 2:22, 72:17</p> <p><b>Vannella</b> [1] - 2:23</p> <p><b>vast</b> [1] - 19:23</p> <p><b>vectors</b> [1] - 27:15</p> <p><b>ventilation</b> [3] - 39:1, 39:4, 41:11</p> <p><b>versus</b> [2] - 11:22,</p>				

<p><b>wherefores</b> <sup>[1]</sup> - 23:21  <b>wherein</b> <sup>[1]</sup> - 63:17  <b>whole</b> <sup>[2]</sup> - 36:5, 52:25  <b>wide</b> <sup>[1]</sup> - 19:15  <b>widespread</b> <sup>[1]</sup> - 66:1  <b>willing</b> <sup>[1]</sup> - 7:23  <b>win</b> <sup>[1]</sup> - 70:11  <b>wind</b> <sup>[1]</sup> - 39:7  <b>window</b> <sup>[4]</sup> - 8:24, 23:7, 29:4, 59:8  <b>wipe</b> <sup>[1]</sup> - 27:25  <b>wish</b> <sup>[4]</sup> - 10:1, 14:17, 34:23, 47:17  <b>wished</b> <sup>[1]</sup> - 70:15  <b>wishes</b> <sup>[2]</sup> - 11:8, 42:2  <b>withdraw</b> <sup>[1]</sup> - 22:14  <b>wonderful</b> <sup>[1]</sup> - 3:7  <b>wonderfully</b> <sup>[1]</sup> - 37:22  <b>word</b> <sup>[1]</sup> - 66:21  <b>words</b> <sup>[3]</sup> - 8:3, 12:8, 12:18  <b>world</b> <sup>[1]</sup> - 18:21  <b>worms</b> <sup>[1]</sup> - 46:5  <b>worry</b> <sup>[1]</sup> - 42:20  <b>worship</b> <sup>[30]</sup> - 13:23, 14:24, 15:13, 19:15, 20:12, 21:1, 21:3, 24:12, 27:4, 27:16, 27:25, 30:4, 30:8, 37:5, 37:6, 39:25, 52:2, 54:14, 56:6, 58:9, 58:10, 58:11, 58:23, 66:2, 66:5, 66:9, 66:17, 69:5  <b>worshippers</b> <sup>[1]</sup> - 6:2  <b>worshipping</b> <sup>[2]</sup> - 25:11, 28:4  <b>worst</b> <sup>[1]</sup> - 59:3  <b>write</b> <sup>[2]</sup> - 63:24, 67:22  <b>writes</b> <sup>[1]</sup> - 49:17  <b>writing</b> <sup>[1]</sup> - 67:23  <b>written</b> <sup>[1]</sup> - 3:21  <b>wrote</b> <sup>[1]</sup> - 10:24</p>	<p><b>yourselves</b> <sup>[1]</sup> - 54:3</p>
<p><b>Z</b></p>	
	<p><b>Zoom</b> <sup>[4]</sup> - 2:1, 3:6, 34:25, 54:19</p>
<p><b>Y</b></p>	
<p><b>years</b> <sup>[8]</sup> - 11:17, 13:3, 16:2, 17:20, 25:6, 49:24  <b>York</b> <sup>[1]</sup> - 61:18  <b>young</b> <sup>[1]</sup> - 29:9  <b>yourself</b> <sup>[1]</sup> - 57:7</p>	

# EXHIBIT CC



# Coronavirus Disease 2019 (COVID-19)

MENU >



## About Masks

Updated Aug. 6, 2020

[Print](#)

A mask may not protect the wearer, but it may keep the wearer from spreading the virus to others.

COVID-19 [spreads](#) mainly from person to person through respiratory droplets produced when an infected person coughs, sneezes, talks, or raises their voice (e.g., while shouting, chanting, or singing). These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. [Recent studies](#) show that a significant portion of individuals with COVID-19 lack symptoms (are “asymptomatic”) and that even those who eventually develop symptoms (are “pre-symptomatic”) can transmit the virus to others before showing symptoms.

To reduce the spread of COVID-19, CDC recommends that people wear masks in public settings when around people outside of their household, especially when other [social distancing](#) measures are difficult to maintain.

## Why it is important to wear a mask

Masks may help prevent people who have COVID-19 from spreading the virus to others. Wearing a mask will help protect people around you, including those at [higher risk of severe illness](#) from COVID-19 and workers who frequently come into close contact with other people (e.g., in stores and restaurants). Masks are most likely to reduce the spread of COVID-19 when they are widely used by people in public settings. The spread of COVID-19 can be reduced when masks are used along with other [preventive measures](#), including [social distancing](#), frequent handwashing, and cleaning and disinfecting frequently touched surfaces.

The masks recommended here are not surgical masks or respirators. Currently, those are critical supplies that should be reserved for healthcare workers and other first responders. Masks are not personal protective equipment (PPE). They are not appropriate substitutes for PPE such as respirators (like N95 respirators) or medical facemasks (like surgical masks) in workplaces where respirators or facemasks are recommended or required to protect the wearer.

## Masks with Exhalation Valves or Vents

The purpose of masks is to keep respiratory droplets from reaching others to aid with source control. Masks with one-way valves or vents allow exhaled air to be expelled out through holes in the material. This can allow exhaled respiratory droplets to reach others and potentially spread the COVID-19 virus. Therefore, CDC does not recommend using masks if they have an exhalation valve or vent.

**More Information**

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[Considerations for Wearing Masks](#)

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[How to Wear Your Mask](#)

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[How to Wash Your Mask](#)

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[How to Make Your Own Mask](#)

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[ASL Video Series: Easy DIY Mask](#)

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[How to Make Your Own Mask Video \(Spanish\)](#)

Last Updated Aug. 6, 2020

Content source: National Center for Immunization and Respiratory Diseases (NCIRD), Division of Viral Diseases

# EXHIBIT DD

## ONLINE REPORT

# Evidence Supporting Transmission of Severe Acute Respiratory Syndrome Coronavirus 2 While Presymptomatic or Asymptomatic

Nathan W. Furukawa, John T. Brooks, Jeremy Sobel

Recent epidemiologic, virologic, and modeling reports support the possibility of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) transmission from persons who are presymptomatic (SARS-CoV-2 detected before symptom onset) or asymptomatic (SARS-CoV-2 detected but symptoms never develop). SARS-CoV-2 transmission in the absence of symptoms reinforces the value of measures that prevent the spread of SARS-CoV-2 by infected persons who may not exhibit illness despite being infectious. Critical knowledge gaps include the relative incidence of asymptomatic and symptomatic SARS-CoV-2 infection, the public health interventions that prevent asymptomatic transmission, and the question of whether asymptomatic SARS-CoV-2 infection confers protective immunity.

As the coronavirus disease (COVID-19) pandemic caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) unfolds, an increasing number of reports have indicated that some infected persons may not exhibit signs or symptoms of illness, including persons who are presymptomatic (SARS-CoV-2 RNA is detectable before symptom onset) or asymptomatic (SARS-CoV-2 RNA is detectable but symptoms never develop) (1–8). The detection of SARS-CoV-2 RNA in presymptomatic or asymptomatic persons does not prove that they can transmit the virus to others. We describe evidence that supports the concept of transmission while presymptomatic and asymptomatic, which we found during a rapid literature review conducted at the Centers for Disease Control and Prevention (CDC) in early April 2020.

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DOI: <https://doi.org/10.3201/eid2607.201595>

## Evidence Supporting Presymptomatic and Asymptomatic Transmission

We searched the literature in PubMed for articles that were published from January 1 through April 2, 2020, and pertained to presymptomatic or asymptomatic SARS-CoV-2 transmission. This search captured the literature until the time CDC made policy changes recommending community cloth face coverings and universal masking in healthcare facilities. We used combinations of the search terms SARS-CoV-2, COVID-19, asymptomatic, presymptomatic, and transmission. We included original articles, brief reports, and correspondences and excluded reviews, commentaries, opinions, and preprint manuscripts (with the exception of CDC-authored studies that were in review). We classified studies as reporting epidemiologic, virologic, or modeling evidence for presymptomatic or asymptomatic transmission of SARS-CoV-2.

## Epidemiologic Evidence

Most reports of presymptomatic (9–12), asymptomatic (13–15), or a combination of presymptomatic or asymptomatic SARS-CoV-2 transmission (16,17) were from China (Table 1). Presymptomatic or asymptomatic primary patients were typically exposed to SARS-CoV-2 during travel from Wuhan or another city in Hubei Province, China (9–16). One couple was exposed during a mass gathering in Shanghai for the Chinese Spring Festival (17). Reported cases of infected persons who transmitted the virus to others while presymptomatic or asymptomatic have occurred within families or households (9–11,13–17), during shared meals (10,12), or during visits with hospitalized family members (9,13). An inherent confounder to these reports from China is the inability to entirely rule out alternative SARS-CoV-2 exposure in the community early in the



ONLINE REPORT

**Table 1.** Summary of epidemiologic reports supporting transmission of severe acute respiratory syndrome coronavirus 2 while asymptomatic or presymptomatic\*

Ref.	Setting	Primary patient age, y/sex	Primary patient exposure	Transmission type	Days from exposure to symptoms	Secondary patient exposure	Limitations/strengths
(9)	Xuzhou, China	56/M	Traveled through Wuhan	Presymptomatic	≥5	3 family household members, 3 hospital contacts	L: Possible exposure while visiting a hospital; unclear exposure to the primary patient by the hospital cluster; possible undetected community transmission.
(10)	Zhoushan, China	45/M	Lived in Wuhan	Presymptomatic	≥3	2 work colleagues sharing dinner	L: Possible exposure from other conference attendees.
(11)	Shanghai, China	65/F, 69/M	Lived in Wuhan	Presymptomatic	6	2 family household members	L: Possible undetected community transmission.
(12)	Luzhou, China	50/M, 51/F, 23/M	Lived in Wuhan	Presymptomatic	≥9	2 family members sharing dinner	L: Possible undetected community transmission.
(13)	Anyang, China	20/F	Lived in Wuhan, China	Asymptomatic	NA	5 family household members	L: Initial negative RT-PCR in the primary case; possible undetected community transmission; possible exposure while visiting a hospital.
(14)	Nanjing, China	67/M	Traveled to Hubei Province, China	Asymptomatic	NA	3 family household members	L: Possible undetected community transmission.
(15)	Beijing, China	48/M	Traveled to Wuhan	Asymptomatic	NA	3 family household members sharing a dinner	L: Possible undetected community transmission.
(16)	Guangzhou, China	35/M	Lived in Wuhan	Presymptomatic or asymptomatic	≥4	2 family household members	L: Possible infection while the family was in Wuhan; primary patient could have been the wife or son.
(17)	Zhejiang, China	58/F, 60/M	Attended Zhejiang Chinese Spring Festival	Presymptomatic or asymptomatic	5	4 family household members	L: Unclear nature of the primary patients' initial exposure during the visit to a temple; possible undetected community transmission.
(18)	Munich, Germany	33/M	Visiting colleague from China was sick	Presymptomatic	3	2 work colleagues	S: The 2 secondary cases had no contact with the sick colleague from China; no community spread in Germany at the time.
(19)	Singapore	55/F, 56/M	Visited Wuhan as tourists	Presymptomatic	≥4	3 church attendees	S: Limited community spread in Singapore during this time.
	Singapore	54/F	Had dinner with confirmed case-patient	Presymptomatic	11	1 classmate in a singing class	
	Singapore	53/F	Had contact with confirmed case-patient	Presymptomatic	8	1 family household member	
	Singapore	37/M	Traveled to the Philippines	Presymptomatic	≥6	1 family household member	
	Singapore	32/M	Traveled to Japan	Presymptomatic	≥3	1 household member	
	Singapore	58/F	Had contact with confirmed case-patient	Presymptomatic	5	2 church attendees	
	Singapore	63/M	Traveled to Indonesia	Presymptomatic	≥2	1 acquaintance with close contact	

\*L, limitation; NA, not applicable; ref., reference; RT-PCR: reverse-transcription PCR; S, strength.

outbreak, when transmission in the community may have been undetected.

However, cases of presymptomatic transmission have been reported from other countries before widespread community transmission occurred. A report from Germany documented infection of a German businessman after exposure to a mildly symptomatic colleague visiting from China (18). Before becoming symptomatic, this businessman exposed 2 other colleagues who subsequently received a COVID-19 diagnosis but did not have contact with the primary patient from China or any other known source. A report from Singapore described 7 COVID-19 clusters resulting from presymptomatic transmission; presymptomatic primary patients varied from persons with travel from high-incidence countries to persons exposed in the local community (19). All primary patients experienced distinct periods of initial exposure and presymptomatic close contact with secondary patients who had no other known exposure risks. The incubation periods for presymptomatic primary patients with distinct exposures ranged from 3 to 11 days; for presymptomatic primary patients with travel history to an area with active transmission, the time from last exposure to symptom onset ranged from  $\geq 2$  to  $\geq 9$  days.

**Virologic Evidence**

Currently, SARS-CoV-2 infection is primarily diagnosed by detection of viral RNA via reverse transcription PCR (RT-PCR) or by viral culture and demonstration of cytopathic effect (20). Although RT-PCR identifies viral RNA and cannot determine whether infectious virus is present, infectiousness can be in-

ferred from cycle threshold ( $C_t$ ) values. The RT-PCR  $C_t$  value represents the number of PCR cycles required to detect SARS-CoV-2 RNA; lower values indicate higher viral load and imply higher infectiousness (20–22). The exact RT-PCR  $C_t$  values associated with the presence of infectious SARS-CoV-2 is unknown, but infectious virus has been isolated from a specimen with an RT-PCR  $C_t$  of 34 (23).

Four reports documented the presence of SARS-CoV-2 RNA with lower  $C_t$  values in samples collected from persons in whom symptoms of COVID-19 never developed (24–27) (Table 2). Two reports described specimens with low RT-PCR  $C_t$  values among presymptomatic and asymptomatic residents of a nursing home identified as part of the same outbreak investigation (23,28). Among these reports, RT-PCR  $C_t$  values for SARS-CoV-2 RNA in asymptotically infected persons ranged from 14 to 40 (23–27). The study with data on presymptomatic infected patients reported an average RT-PCR  $C_t$  value of 24 (range 15–38) (23). Two reports described culture of infectious virus from persons with asymptomatic (24) and presymptomatic (23) SARS-CoV-2 infection. Although these reports did not identify actual virus transmission while presymptomatic or asymptomatic, the low RT-PCR  $C_t$  values (i.e., high viral load) and ability to isolate infectious SARS-CoV-2 provide plausible virologic evidence for SARS-CoV-2 transmission by persons not demonstrating symptoms.

**Modeling Evidence**

Two studies used models to estimate the serial interval (time between symptom onset in a primary patient and the secondary patient) (29,30) (Table 3).

**Table 2.** Summary of virologic reports supporting transmission of severe acute respiratory syndrome coronavirus 2 while asymptomatic and presymptomatic\*

Reference	Setting	Patient(s), age/sex	Laboratory findings	Limitations
(23,28)	Nursing home outbreak in Washington	24 presymptomatic and 3 asymptomatic	Mean RT-PCR $C_t$ value 24.2 for presymptomatic and 27.3 for asymptomatic patients. Viral culture identified infectious virus in 7 (64%) of 11 specimens from presymptomatic patients; no virus detected in 1 asymptomatic patient.	Incomplete viral culture sampling from all presymptomatic and asymptomatic patients.
(24)	Repatriated to Germany from Wuhan, China	2 asymptomatic adults	Patients' RT-PCR $C_t$ values 24 and 30; infectious virus was detected by viral culture for both.	No evidence of transmission during evacuation flight.
(25)	Family cluster in Singapore	Asymptomatic 6 mo/M	RT-PCR $C_t$ values 14 at diagnosis and increased to 33 over 9 d.	No evidence of transmission from the infant to another household member.
(26)	Cluster in Vietnam related to travel to Wuhan	Asymptomatic 55 y/M	RT-PCR $C_t$ values $>40$ at diagnosis and during 9 d of viral RNA shedding.	High $C_t$ in the asymptomatic patient suggests minimal infectiousness.
(27)	Family cluster in Guangdong, China	Asymptomatic, 26 y/M	RT-PCR $C_t$ values 22–32 during testing 7–11 d after initial diagnosis.	No evidence of transmission to other family members in the cluster.

\* $C_t$ , cycle threshold, RT-PCR, reverse transcription PCR.

ONLINE REPORT

**Table 3.** Summary of modeling reports supporting transmission of severe acute respiratory syndrome coronavirus 2 while asymptomatic and presymptomatic\*

Reference	Data source	Model findings	Limitations
(29)	Confirmed case-patients from 18 provincial health departments in China	The mean serial interval was 4 d, and symptoms developed in 13% of secondary case-patients before primary case-patients, suggesting presymptomatic transmission.	Data limited to reports of confirmed cases early in the outbreak; recall bias may attribute infection to recent exposures and falsely lower the serial interval.
(30)	Published articles and case investigation reports.	The median serial interval was 4–5 d, depending on the reports analyzed.	Recall bias may attribute infection to recent exposures and falsely lower the serial interval.
(32)	Spatiotemporal data and reports on infections of 375 persons during Spring Festival, China	An estimated 86% of all infections were asymptomatic or mild and not reported; up to 79% of reported cases may have originated from these unreported asymptomatic or mild cases.	Data limited to China early in the outbreak; several assumptions built into a complex model.
(33)	Reports of 40 manually selected transmission pairs from China	On the basis of generation times and serial intervals, the authors estimated that one third to one half of transmission occurred from presymptomatic persons.	Data limited for reports of confirmed cases early in the outbreak; recall bias may attribute infection to recent exposures and falsely lower the serial interval.

They estimated the serial interval of COVID-19 to be 4 days, which is shorter than the estimated median incubation period for COVID-19 of 5 days (31). One report suggested that up to 13% of infections may be transmitted during the presymptomatic period of illness (29). These studies relied on reports of primary and secondary cases and may be limited by recall bias; secondary patients are more likely to remember proximal exposures, biasing results toward a shorter serial interval.

Two models attempted to estimate the number of infections caused by asymptomatic, presymptomatic, or mildly symptomatic infected persons (30,32). These models varied widely; 1 model suggested that up to half of infections were transmitted from infected persons who were presymptomatic (33), and another suggested that up to four fifths of infections were transmitted by persons with no symptoms or mild symptoms (32). Both models suggested that a large number of persons with asymptomatic or mildly symptomatic infections were not detected by the health system and that these persons meaningfully contributed to ongoing community transmission (32,33). Although models are highly dependent on the assumptions built into them, these models suggest that the speed and extent of SARS-CoV-2 transmission cannot be accounted for solely by transmission from symptomatic persons.

Each of the epidemiologic, virologic, and modeling studies described has limitations. However, in the aggregate, these diverse studies suggest that SARS-CoV-2 can be transmitted by persons with presymptomatic or asymptomatic infection, which may meaningfully contribute to the propagation of the COVID-19 pandemic. This literature summation was conducted to support changes in CDC

recommendations to reduce the risk for asymptomatic transmission and was not a systematic review. These conclusions are drawn from the literature available at the time and may change, given the rapidly evolving nature of the evidence base for asymptomatic transmission.

**Public Health Implications of Transmission While Asymptomatic**

The existence of persons with asymptomatic SARS-CoV-2 infection who are capable of transmitting the virus to others has several implications. First, the case-fatality rate for COVID-19 may be lower than currently estimated ratios if asymptomatic SARS-CoV-2 infections are included (34,35). Second, transmission while asymptomatic reinforces the value of community interventions to slow the transmission of COVID-19. Knowing that asymptomatic transmission was a possibility, CDC recommended key interventions including physical distancing (36), use of cloth face coverings in public (37), and universal masking in healthcare facilities (38) to prevent SARS-CoV-2 transmission by asymptomatic and symptomatic persons with SARS-CoV-2 infection. Third, asymptomatic transmission enhances the need to scale up the capacity for widespread testing and thorough contact tracing to detect asymptomatic infections, interrupt undetected transmission chains, and further bend the curve downward.

**Science Questions to Inform Public Health Action**

The existence of SARS-CoV-2 transmission while infected persons are presymptomatic and asymptomatic raises 3 key questions that need to be answered to inform public health action. First, the incidence of asymptomatic compared with symptomatic SARS-

CoV-2 infection needs to be determined. The extent of presymptomatic or asymptomatic SARS-CoV-2 infection may be clarified by studies using serial virologic data, serologic data, or a combination of both in observational cohorts or surveillance systems. If a substantial proportion of infections are asymptomatic, enhanced testing strategies may be needed to detect these persons. Second, given that a large proportion of infections probably result from transmission from asymptomatic or presymptomatic persons (32,33,39), the effectiveness of public health interventions aimed at reducing their infectiousness needs to be quantified. If the COVID-19 pandemic is found to be driven by undetected asymptomatic or mildly symptomatic SARS-CoV-2 infections, new innovations in disease detection and prevention (beyond exhaustive contact tracing, mass testing, and isolation of asymptomatic contacts) may be needed. Last, knowledge of SARS-CoV-2 immunity among persons with asymptomatic or mild SARS-CoV-2 infection is needed; specifically, whether full or partial immunity develops in these persons, how long protective immunity lasts, and if it is possible to be immune from reinfection but still asymptotically transmit SARS-CoV-2 while in a carrier state. This information will be crucial for projecting the anticipated course of the pandemic and the potential for SARS-CoV-2 resurgence if immunity wanes (40). Information about immunity is also valuable for healthcare and other critical infrastructure workers for whom rates of exposure, and thereby asymptomatic infection, may be higher and who therefore warrant data-informed guidance on how to safely return to work. The answers to these questions will be crucial for guiding the gradual relaxing of community interventions, resuming the normal functions of society, and recovering from the COVID-19 pandemic.

### About the Author

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## ONLINE REPORT

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# EXHIBIT EE

Research

JAMA Internal Medicine | Original Investigation

## Clinical Course and Molecular Viral Shedding Among Asymptomatic and Symptomatic Patients With SARS-CoV-2 Infection in a Community Treatment Center in the Republic of Korea

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**IMPORTANCE** There is limited information about the clinical course and viral load in asymptomatic patients infected with severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

**OBJECTIVE** To quantitatively describe SARS-CoV-2 molecular viral shedding in asymptomatic and symptomatic patients.

**DESIGN, SETTING, AND PARTICIPANTS** A retrospective evaluation was conducted for a cohort of 303 symptomatic and asymptomatic patients with SARS-CoV-2 infection between March 6 and March 26, 2020. Participants were isolated in a community treatment center in Cheonan, Republic of Korea.

**MAIN OUTCOMES AND MEASURES** Epidemiologic, demographic, and laboratory data were collected and analyzed. Attending health care personnel carefully identified patients' symptoms during isolation. The decision to release an individual from isolation was based on the results of reverse transcription-polymerase chain reaction (RT-PCR) assay from upper respiratory tract specimens (nasopharynx and oropharynx swab) and lower respiratory tract specimens (sputum) for SARS-CoV-2. This testing was performed on days 8, 9, 15, and 16 of isolation. On days 10, 17, 18, and 19, RT-PCR assays from the upper or lower respiratory tract were performed at physician discretion. Cycle threshold (Ct) values in RT-PCR for SARS-CoV-2 detection were determined in both asymptomatic and symptomatic patients.

**RESULTS** Of the 303 patients with SARS-CoV-2 infection, the median (interquartile range) age was 25 (22-36) years, and 201 (66.3%) were women. Only 12 (3.9%) patients had comorbidities (10 had hypertension, 1 had cancer, and 1 had asthma). Among the 303 patients with SARS-CoV-2 infection, 193 (63.7%) were symptomatic at the time of isolation. Of the 110 (36.3%) asymptomatic patients, 21 (19.1%) developed symptoms during isolation. The median (interquartile range) interval of time from detection of SARS-CoV-2 to symptom onset in presymptomatic patients was 15 (13-20) days. The proportions of participants with a negative conversion at day 14 and day 21 from diagnosis were 33.7% and 75.2%, respectively, in asymptomatic patients and 29.6% and 69.9%, respectively, in symptomatic patients (including presymptomatic patients). The median (SE) time from diagnosis to the first negative conversion was 17 (1.07) days for asymptomatic patients and 19.5 (0.63) days for symptomatic (including presymptomatic) patients ( $P = .07$ ). The Ct values for the envelope (*env*) gene from lower respiratory tract specimens showed that viral loads in asymptomatic patients from diagnosis to discharge tended to decrease more slowly in the time interaction trend than those in symptomatic (including presymptomatic) patients ( $\beta = -0.065$  [SE, 0.023];  $P = .005$ ).

**CONCLUSIONS AND RELEVANCE** In this cohort study of symptomatic and asymptomatic patients with SARS-CoV-2 infection who were isolated in a community treatment center in Cheonan, Republic of Korea, the Ct values in asymptomatic patients were similar to those in symptomatic patients. Isolation of asymptomatic patients may be necessary to control the spread of SARS-CoV-2.

JAMA Intern Med. doi:10.1001/jamainternmed.2020.3862  
Published online August 6, 2020.

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Since the first cases of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) infection were detected in Wuhan, China, in December 2019,<sup>1</sup> a total of 4 789 205 laboratory-confirmed cases and 318 789 deaths have been documented globally as of May 20, 2020.<sup>2</sup> An explosive outbreak among a religious group in Daegu, Republic of Korea (ROK), in February 2020 led to a vigorous containment strategy, including massive testing and active contact tracing. As the number of cases surpassed the capacity of the health care system, the Ministry of Health and Welfare of Korea decided to isolate asymptomatic and pauci-symptomatic patients in community treatment centers (CTCs),<sup>3</sup> temporary facilities. The potential for transmission from asymptomatic people has been cited as an important factor in controlling the spread of novel coronavirus disease 2019 (COVID-19),<sup>4</sup> but there is limited information about the clinical course and viral loads of asymptomatic people with SARS-CoV-2 infection. Using an asymptomatic patient cohort in a CTC, we describe the clinical course of asymptomatic infection and quantitatively compare the molecular viral load of SARS-CoV-2 between asymptomatic and symptomatic patients.

## Methods

### Study Design and Participants

A retrospective cohort study was conducted at a CTC in Cheonan, ROK, between March 6 and March 26, 2020. In total, 303 patients with SARS-CoV-2 infection were included from Daegu. The CTC was previously a dormitory building for public officials owned by the government. Patients with confirmed infection were isolated in solitary (92%) or shared spaces with separate rooms (8%). Health care personnel included 8 physicians, 12 nurses, and 8 nurse assistants. Physicians took charge of symptom monitoring via daily telephone calls and collection of specimens from patients. Body temperature was monitored twice daily. Patients could be seen by a physician on demand. The clean zone, where health care workers worked, was separated from the patient zone. One negative-pressure container for a portable radiograph imaging facility was located next to the entrance. The Korea Centers for Disease Control and Prevention has recommended the end of isolation after consecutive negative results 24 hours apart after 1 to 2 weeks from isolation. Reverse transcription-polymerase chain reaction (RT-PCR) assay from upper respiratory tract (URT) specimens (nasopharynx and oropharynx swab) and lower respiratory tract (LRT) specimens (sputum) for SARS-CoV-2 were tested on days 8, 9, 15, and 16 of isolation. On days 10, 17, 18, and 19, RT-PCR assays from URT or LRT samples were performed at the discretion of the physician. A negative conversion of RT-PCR assay for SARS-CoV-2 was defined as negative results from both URT and LRT specimens, and the median time of first negative conversion was calculated from the date of diagnosis. Data on demographic characteristics, comorbidities, symptoms, and signs and the results of RT-PCR assay for SARS-CoV-2 were investigated. Asymptomatic patients were defined as those with no symptoms or signs of infection with SARS-CoV-2 during the study period from the date of diagnosis. Presymptomatic patients were

### Key Points

**Question** Are there viral load differences between asymptomatic and symptomatic patients with severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) infection?

**Findings** In this cohort study that included 303 patients with SARS-CoV-2 infection isolated in a community treatment center in the Republic of Korea, 110 (36.3%) were asymptomatic at the time of isolation and 21 of these (19.1%) developed symptoms during isolation. The cycle threshold values of reverse transcription-polymerase chain reaction for SARS-CoV-2 in asymptomatic patients were similar to those in symptomatic patients.

**Meaning** Many individuals with SARS-CoV-2 infection remained asymptomatic for a prolonged period, and viral load was similar to that in symptomatic patients; therefore, isolation of infected persons should be performed regardless of symptoms.

defined as asymptomatic from diagnosis to isolation placement with subsequent development of symptoms during observation. This study was approved by the Institutional Review Board (IRB) of Soonchunhyang University, Seoul Hospital (IRB No. 2020-04-007). The IRB waived the requirement for patient informed consent owing to the retrospective nature of the study and its impracticability. This study followed the Strengthening the Reporting of Observational Studies in Epidemiology (STROBE) reporting guideline.

### Specimen Collection and RT-PCR for SARS-CoV-2

The URT specimens were collected from both nasopharyngeal and oropharyngeal swabs obtained by trained medical staffs (physicians and nurses). For LRT specimens, participants were given instructions the night before to collect a first morning sputum (after gargling) in a specimen cup; RT-PCR assays for SARS-CoV-2 were performed using Allplex 2020-nCoV assay (Seegene, Seoul, ROK) to determine the presence of virus through the identification of 3 genetic markers: envelope (*env*) gene, RNA-dependent RNA polymerase (*RdRp*) gene, and nucleocapsid protein (*N*) gene. The cycle threshold (Ct) during RT-PCR testing refers to when the detection of viral amplicons occurs, it is inversely correlated with the amount of RNA present. A lower Ct value indicates large quantities of viral RNA. It was considered positive when the Ct values of all genes were less than 40 cycles.

### Statistical Analyses

Categorical variables were expressed as counts and frequencies, and continuous variables were expressed as medians and interquartile ranges (IQRs) or means and SDs or SEs. Proportions for categorical variables were compared using  $\chi^2$  or Fisher exact test. Continuous variables were analyzed using the Mann-Whitney *U* test method. The proportions of negative conversion were estimated using survival analysis, Kaplan-Meier plot, and log-rank test to determine the difference in median time of the first negative conversion from diagnosis between asymptomatic and symptomatic (including presymptomatic) patients. To estimate marginal effects and linear time interaction by group, generalized estimating equations were used to compare appropriacy of



**Table. Baseline Characteristics of Patients Infected With Severe Acute Respiratory Syndrome Coronavirus 2**

Characteristic	Patients, No. (%)			P value
	Asymptomatic (n = 89)	Presymptomatic (n = 21)	Symptomatic (n = 193)	
<b>Sex</b>				
Female	55 (61.8)	10 (47.6)	136 (70.5)	.07 <sup>a</sup>
Male	34 (38.2)	11 (52.4)	57 (29.5)	
<b>Age</b>				
Median (IQR), y	22 (22.0-38.5)	28 (22.5-40.5)	24 (21.0-31.5)	.30 <sup>b</sup>
<20	8 (9.0)	2 (9.5)	13 (6.7)	
20-29	54 (60.7)	9 (42.9)	115 (59.6)	
30-39	11 (12.4)	5 (23.8)	20 (10.4)	
40-49	11 (12.4)	1 (4.8)	24 (12.4)	
≥50	5 (5.6)	4 (19.0)	21 (10.9)	
<b>Comorbidity</b>				
Hypertension	2 (2.2)	0	8 (4.1)	.77 <sup>b</sup>
Asthma	0	0	1 (0.5)	>.99 <sup>b</sup>
Cancer	0	0	1 (0.5)	>.99 <sup>b</sup>

Abbreviation: IQR, interquartile range.

<sup>a</sup> P value by  $\chi^2$  test.

<sup>b</sup> P value by Fisher exact test.

dynamics of Ct values between asymptomatic and symptomatic (including presymptomatic) patients. All statistical analyses were performed using SPSS software, version 26.0 (IBM Corporation). Statistical significance was set as  $P < .05$ .

## Results

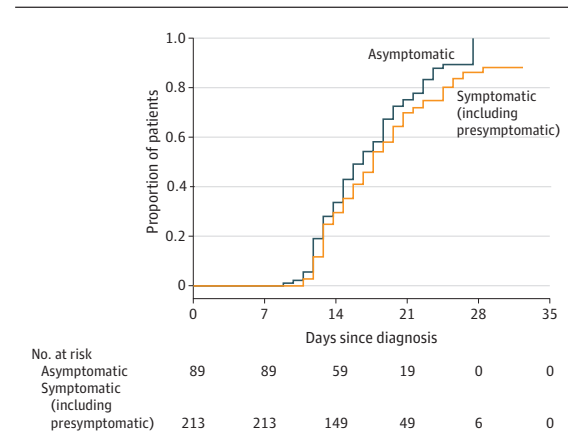
### Clinical Characteristics and Prognosis of Asymptomatic Patients

As shown in the **Table**, the median (IQR) age of patients was 25 (22-36) years, and 201 (66.3%) were women. Only 12 (3.9%) patients had comorbidities (10 had hypertension, 1 had cancer, and 1 had asthma). The median (IQR) time from diagnosis to date of isolation was 6 (6-9) days. Of 303 enrolled patients, 110 (36.3%) were asymptomatic at the time of isolation. Of asymptomatic patients, 21 (19.1%) developed symptoms during isolation. The median (IQR) interval time from diagnosis to symptom onset in presymptomatic patients was 15 (13-20) days. The most common symptoms among 193 symptomatic patients at the time of isolation were cough (108 [56.0%]), rhinorrhea/nasal congestion (88 [45.6%]), and sputum production (53 [27.5%]), followed by sore throat (52 [26.9%]), dysosmia (20 [10.4%]), diarrhea (10 [5.2%]), dysgeusia (7 [3.6%]), abdominal pain (4 [2.1%]), and vomiting (1 [0.5%]). On March 10, 2020, one symptomatic patient was transferred to the hospital because of severe vomiting. From March 15 to March 16, 2020, a total of 26 asymptomatic patients and 58 symptomatic patients were released from isolation based on the results of RT-PCR from March 13, 14, and 15.

### Comparison of Ct Values of RT-PCR Assay for SARS-CoV-2 Between Asymptomatic and Symptomatic Patients

In total, 1886 RT-PCR assays for SARS-CoV-2 were performed. There were 567 (30.1%) tests performed for asymptomatic patients and 1319 (69.9%) tests performed for symptomatic (including presymptomatic) patients. The mean (SD) number of tests was 6.4 (2.1) per person for the 89 asymptomatic pa-

**Figure 1. Proportion of Negative Conversion in Asymptomatic and Symptomatic (Including Presymptomatic) Patients**

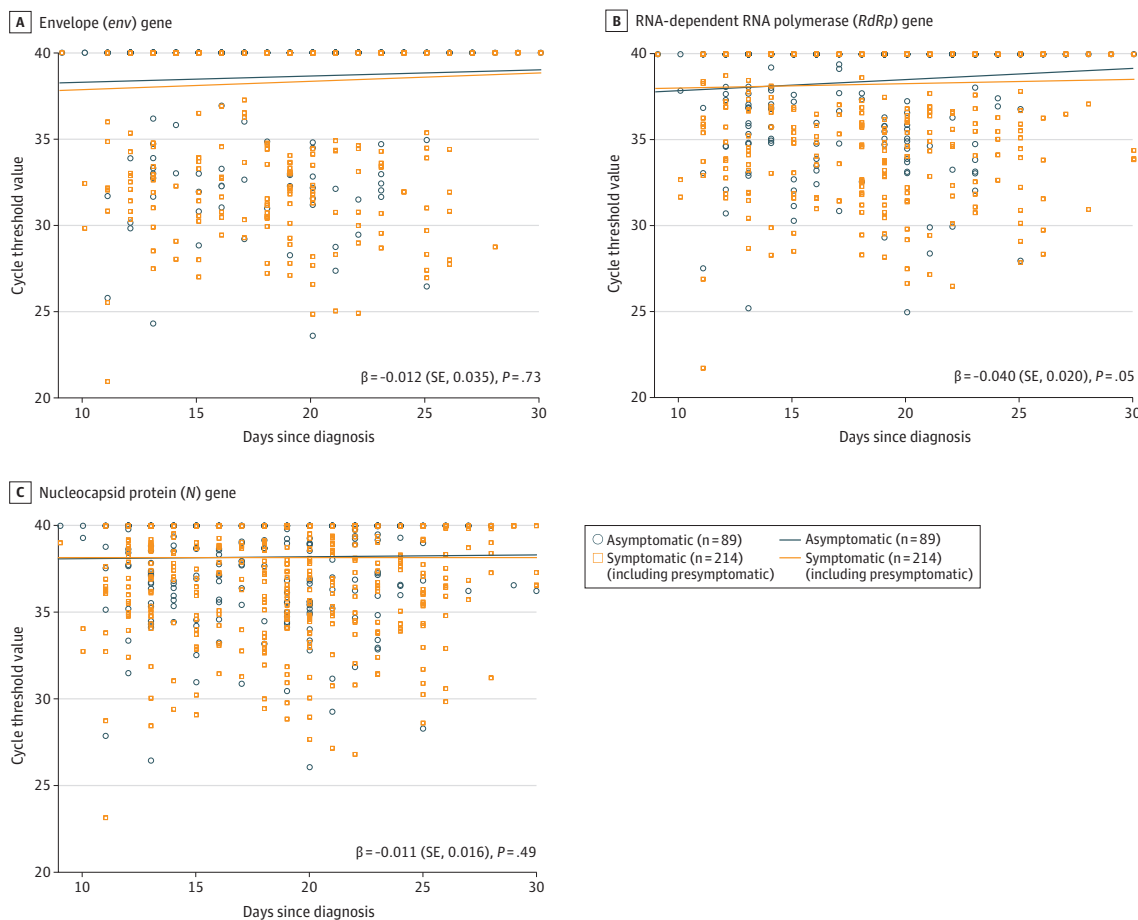


Kaplan-Meier curves for negative conversion ratio between asymptomatic and symptomatic (including presymptomatic) patients. Days since diagnosis means from diagnosis to the first negative conversion. There was no significant difference between the 2 groups ( $P = .07$ ).

tients and 6.2 (2.3) tests for the 214 symptomatic patients. According to the Kaplan-Meier plot, the proportions of participants with a negative conversion at days 14 and 21 from diagnosis were 33.7% and 75.2% in asymptomatic patients and 29.6% and 69.9% in symptomatic (including presymptomatic) patients, respectively (**Figure 1**). The median (SE) time from diagnosis to first negative conversion was 17 (1.07) days in asymptomatic patients and 19.5 (0.63) days in symptomatic (including presymptomatic) patients ( $P = .07$ ) (**Figure 1**).

The Ct value dynamics of the *RdRp* gene from URT specimens showed that viral loads of symptomatic (including presymptomatic) patients tended to decrease more slowly in the time interaction trend than those of asymptomatic patients ( $\beta = 0.040$  [SE, 0.020];  $P = .048$ ) (**Figure 2**). As shown in

Figure 2. The Cycle Threshold Value Dynamics of *env*, *RdRp*, and *N* Genes From Upper Respiratory Tract Specimens



Scatterplots for dynamics of cycle threshold values between asymptomatic and symptomatic (including presymptomatic) patients for the *env* gene (A), *RdRp* gene (B), and *N* gene (C). Beta value represents a slope of decline. There is a

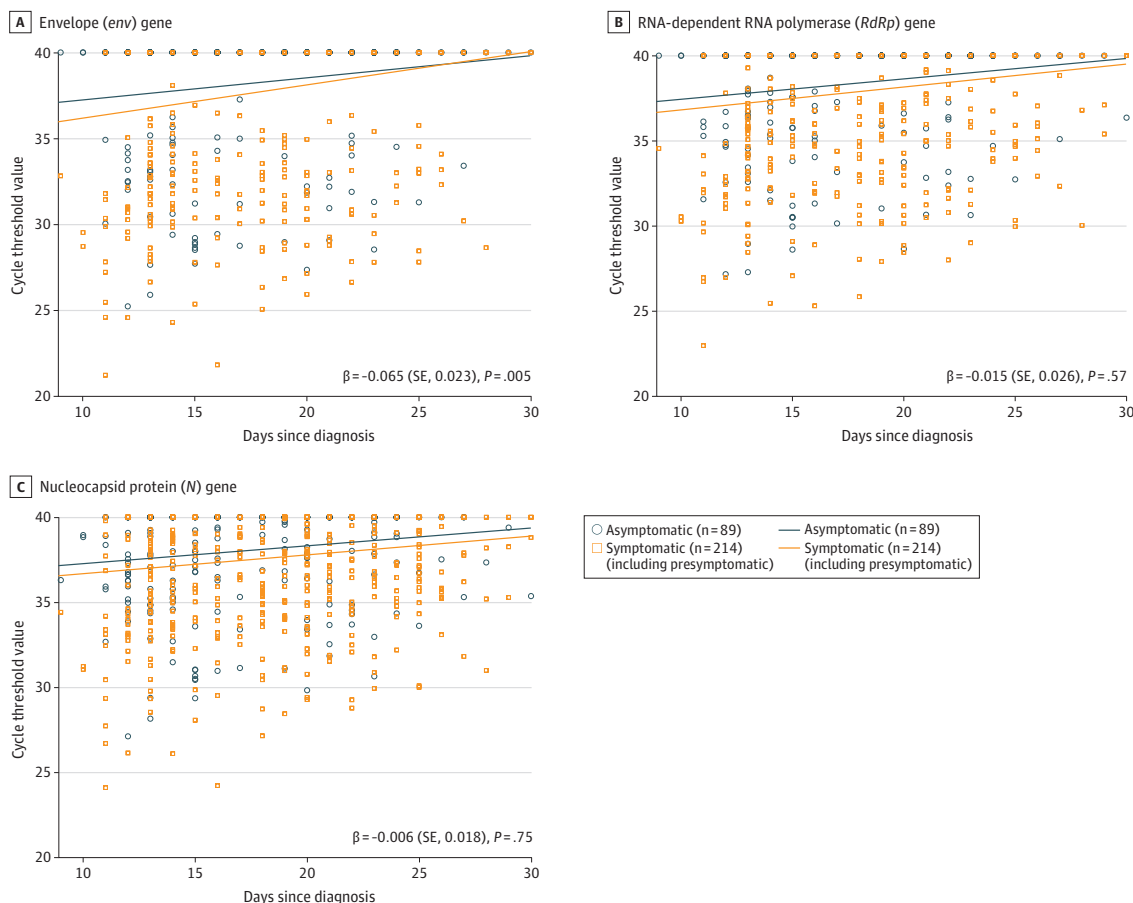
significant difference in the *RdRp* gene between the 2 groups ( $\beta = 0.040$  [SE, 0.020];  $P = .048$ ).

Figure 3, the Ct value dynamics of *env* genes from LRT specimens showed that viral loads of asymptomatic patients tended to decrease more slowly in the time interaction trend than those of symptomatic (including presymptomatic) patients ( $\beta = -0.065$  [SE, 0.023];  $P = .005$ ). There were no significant differences in Ct values of *env* ( $\beta = -0.012$  [SE, 0.035];  $P = .73$ ) and *N* genes ( $\beta = 0.011$  [SE, 0.016];  $P = .49$ ), from URT specimens and *RdRp* ( $\beta = -0.015$  [SE, 0.026];  $P = .57$ ) and *N* genes ( $\beta = -0.006$  [SE, 0.018];  $P = .75$ ), from LRT specimens between asymptomatic and symptomatic (including presymptomatic) patients.

### Discussion

The findings demonstrate that 80.9% (95% CI, 77.2%-84.6%) of patients with SARS-CoV-2 who were asymptomatic at the time of detection of a positive RT-PCR remained

asymptomatic during a median (IQR) of 24 (20-26) days from diagnosis, and the Ct values in asymptomatic patients were similar to those in symptomatic patients. A previous study in a long-term care facility showed that 56.5% of patients with SARS-CoV-2 infection were asymptomatic at the time of diagnosis, and 23.1% remained asymptomatic during 7 days.<sup>5</sup> As mathematically estimated in Diamond Princess cruise ship patients, the proportion of asymptomatic cases was 17.9%.<sup>6</sup> In a population-based study in Iceland, 43% of 1221 participants who tested positive were asymptomatic initially, although symptoms developed later.<sup>7</sup> In these previous reports, presymptomatic patients were also considered asymptomatic cases because the clinical course of asymptomatic cases was not observed. In our study, asymptomatic patients who were required to be isolated in a CTC according to government policy were fully observed by health care personnel. An important implication of our findings is that there may be substantial underre-

Figure 3. The Cycle Threshold Value Dynamics of *env*, *RdRp*, and *N* Genes From Lower Respiratory Tract Specimens

Scatterplots for dynamics of cycle threshold values between asymptomatic and symptomatic (including presymptomatic) patients for the *env* gene (A), *RdRp* gene (B), and *N* gene (C). Beta value represents a slope of decline. There is a

significant difference in the *env* gene between the 2 groups ( $\beta = -0.065$  [SE, 0.023];  $P = .005$ ).

reporting of infected patients using the current symptom-based surveillance and screening.

Little is known about the infectiveness of asymptomatic patients. Our findings, given a recent report of SARS-CoV-2 transmission from an asymptomatic person to 4 family members,<sup>8</sup> nevertheless offer biological plausibility to such reports of transmission by asymptomatic people. A previous study<sup>9</sup> analyzing a small number of patients also reported that viral load of asymptomatic SARS-CoV-2 patients was as high as that of symptomatic patients. Although the high viral load we observed in asymptomatic patients raises a distinct possibility of a risk for transmission, our study was not designed to determine this. In this study, Ct values of *env* genes from LRT specimens in asymptomatic patients tended to decrease more gradually than those of symptomatic patients. It appears that the *env* target signal was aberrant owing to fragmented or degraded genomes. The genetic material of dead viral particles remaining within epithelial cells can be detected as epithelial cells are

desquamated.<sup>10</sup> In a recent study, viral shedding from sputum has been shown to extend beyond symptom duration.<sup>11</sup> It is important to note that detection of viral RNA does not equate infectious virus being present and transmissible. For a better understanding of the viral shedding and potential transmissibility of asymptomatic infection, large rigorous epidemiologic and experimental studies are needed.

#### Limitations

This study has limitations. First, it is possible that the asymptomatic patients in our cohort were not representative of all asymptomatic patients in the community because false negatives would not have been included in our sample. This may have been in contrast to symptomatic patients, where the false-negative rate was lower. Unfortunately, without widespread testing in the community with different methods, we have no way of knowing if this was the case. Second, we did not determine the role that molecular viral shedding

played in transmission from asymptomatic patients. An epidemiologic investigation with this objective was not conducted, and we did not obtain information about the date of exposure and symptom onset prior to isolation. However, had we obtained this information, inferences would still be uncertain because of difficulty validating exposures and determining which exposure was a causal relationship. Third, our findings cannot be generalized to the entire population, because our cohort consisted of young, healthy patients. Fourth, we could not evaluate the adequacy of sputum specimens because of biosafety issues and equipment availability.

## Conclusions

In this cohort study of symptomatic and asymptomatic patients with SARS-CoV-2 infection who were isolated in a community treatment center in Cheonan, ROK, the Ct values in asymptomatic patients were similar to those in symptomatic patients. Viral molecular shedding was prolonged. Because transmission by asymptomatic patients with SARS-CoV-2 may be a key factor in community spread, population-based surveillance and isolation of asymptomatic patients may be required.

### ARTICLE INFORMATION

**Accepted for Publication:** June 29, 2020.

**Published Online:** August 6, 2020.

doi:10.1001/jamainternmed.2020.3862

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**Conflict of Interest Disclosures:** Dr Loeb reported receiving grants and personal fees from Seqirus, personal fees and nonfinancial support from Sanofi, and personal fees from the World Health Organization and Pfizer outside the submitted work. No other disclosures were reported.

**Funding/Support:** This work was supported by the Soonchunhyang University Research Fund.

**Role of the Funder/Sponsor:** The funder had no role in the design and conduct of the study; collection, management, analysis, and interpretation of the data; preparation, review, or approval of the manuscript; and decision to submit the manuscript for publication.

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# EXHIBIT FF

## **Churches Were Eager to Reopen. Now They Are Confronting Coronavirus Cases.**

The New York Times

July 10, 2020 Friday 00:19 EST

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**Section:** US

**Length:** 1871 words

**Byline:** Kate Conger, Jack Healy and Lucy Tompkins

**Highlight:** The virus has infiltrated Sunday services, church meetings and youth camps. More than 650 cases have been linked to religious facilities during the pandemic.

### **Body**

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The virus has infiltrated Sunday services, church meetings and youth camps. More than 650 cases have been linked to religious facilities during the pandemic.

PENDLETON, Ore. — Weeks after President Trump demanded that America's shuttered houses of worship be allowed to reopen, new outbreaks of the coronavirus are surging through churches across the country where services have resumed.

The virus has infiltrated Sunday sermons, meetings of ministers and Christian youth camps in Colorado and Missouri. It has struck churches that reopened cautiously with face masks and social distancing in the pews, as well as some that defied lockdowns and refused to heed new limits on numbers of worshippers.

Pastors and their families have tested positive, as have church ushers, front-door greeters and hundreds of churchgoers. In Texas, about 50 people contracted the virus after a pastor told congregants they could once again hug one another. In Florida, a teenage girl died last month after attending a youth party at her church.

More than 650 coronavirus cases have been linked to nearly 40 churches and religious events across the United States since the beginning of the pandemic, with many of them erupting over the last month as Americans resumed their pre-pandemic activities, according to a New York Times database.

Churches Were Eager to Reopen. Now They Are Confronting Coronavirus Cases.

"There's a very fine line between protecting the health and safety of people, and protecting the right to worship," said George Murdock, a county commissioner in northeastern Oregon, where the largest outbreak in the state has been traced to a Pentecostal church in a neighboring county. "It's one we've been walking very nervously all along."

While thousands of churches, synagogues and mosques across the country have been meeting virtually or outside on lawns and in parking lots to protect their members from the virus, the right to hold services within houses of worship became a political battleground as the country crawled out of lockdown this spring. In May, the president declared places of worship part of an "essential service" and threatened, though it was uncertain he had the power to do so, to override any governor's orders keeping them closed.

But now, as the virus rages through Texas, Arizona and other evangelical bastions of the South and West, some churches that fought to reopen are being forced to close again and grapple with whether it is even possible to worship together safely.

"Our churches have followed protocols – masks, go in one door and out the other, social distancing," said Cynthia Fierro Harvey, a bishop with the United Methodist Church in Louisiana, where three churches closed again over the last week. "And still people have tested positive."

Other congregations have remained defiant in the face of rising infections, saying that state rules limiting service sizes infringe on their constitutional right to worship.

Some Christian groups objected to a new California rule that restricts singing in places of worship. In Nevada, the Calvary Chapel Dayton Valley is challenging state rules that cap religious gatherings at 50 people while allowing casinos and other reopening businesses to operate without similar limits.

"They're downplaying the role that religion plays in the lives of Americans and suggesting it's more important to go to the gym than to go to church," said Kristen K. Waggoner, general counsel of the Alliance Defending Freedom, a conservative religious liberty group that brought the Nevada lawsuit and has challenged other state restrictions on religious gatherings. She said a vast majority of churches meet or exceed federal health guidelines for reopening.

But as new cases and clusters have emerged in recent weeks from Florida to Kansas to Hawaii, public health experts have emphasized that, even with social distancing, the virus can easily spread through the air when hymns are sung and sermons preached inside closed spaces. One of



Churches Were Eager to Reopen. Now They Are Confronting Coronavirus Cases.

the world's first mass coronavirus outbreaks occurred in a secretive South Korean church.

"It's an ideal setting for transmission," said Carlos del Rio, an infectious-disease expert at Emory University, referring to church gatherings. "You have a lot of people in a closed space. And they're speaking loudly, they're singing. All those things are exactly what you don't want."

Congregants at Graystone Baptist Church in Ronceverte, W.Va., began to fall ill 10 days after Sunday services resumed in late May, with masks optional. There have been at least 51 confirmed cases and three deaths tied to the church, local health officials said.

Charles Hiser, 82, was the first of three churchgoers to die after contracting the virus.

His daughter, Libby Morgan, said her father had lived alone and had spent the last few months cooped up at home to stay safe. She brought him groceries and talked to him regularly on the phone so he was not lonely. But Mr. Hiser missed going to Graystone Baptist, where he had attended services for 30 years or so, his daughter said. So as soon as regular services resumed, he went right back, eschewing a mask.

Within two weeks, he had tested positive for the virus.

"I felt like, gosh, I was thinking he'd be safe there," Ms. Morgan said. "You know, you're in church. Just like a child that goes to school is supposed to feel safe."

The church is now reopened, again, after a two-week closure.

There were just six recorded cases of the coronavirus in Union County, in rural northeastern Oregon, when Lighthouse United Pentecostal Church announced its reopening on May 22 in an Instagram post that also cited Mr. Trump's remarks about reopening churches.

Now, the county has recorded 356 cases, many of them traced to the church.

The outbreak is thought to have been seeded by a wedding there, which drew attendees from out of town, said Dan Satterwhite, a pastor at an affiliated Lighthouse Church in the neighboring town of Pendleton. The pastor of the Island City church contracted the virus, and his wife was hospitalized, Mr. Satterwhite said.

In his own church, Mr. Satterwhite said, congregants were social distancing and mostly wearing masks. He had initially livestreamed



Churches Were Eager to Reopen. Now They Are Confronting Coronavirus Cases.

services on Facebook, but some congregants begged to return to church and others did not have reliable internet access.

"I am trying to do the right thing. I know a lot of people don't feel this way, but those that do feel that church is essential," Mr. Satterwhite said. "There's more to be considered there than just the physical health, there's also the spiritual health."

The outbreak has stoked resentment against the church from residents who believe that its members acted recklessly, but some local officials defended the church's actions. In a virtual town-hall event, Sheriff Boyd Rasmussen of Union County said the congregation had moved services outside in an effort to socially distance after a complaint was made to the sheriff's office. The church also offered coronavirus tests in its parking lot after cases were reported, said J.B. Brock, the county's emergency manager.

Ron Arbaugh, a pastor at Calvary Chapel of San Antonio, said his church had followed "the letter of the law" and tried to practice social distancing since it was allowed to reopen in May. The ushers, greeters and leaders of the children's ministry wore face masks. Families sat spaced out in the pews. About half the congregation wore masks.

But now, about 50 congregants and staff members – including the pastor and his wife – have tested positive for the coronavirus. Mr. Arbaugh said all the cases had been mild so far.

He said he does not know how the virus spread in the church or who brought it in, but that he now regrets announcing after several weeks of resumed services that congregants could hug one another again.

"In retrospect, I would have said: Just maintain that distance," he said. "In a spiritual environment we had people who were away from fellowship for so long and in isolation. They were hurting. We just got to a point where we thought, we need to have normal church services."

Over 80 cases have been linked to Kanakuk Kamps, a Christian youth camp in Missouri. Melissa Fisher, a parent whose teenagers attended the facility in early June, said that camp leaders had asked campers to quarantine themselves for two weeks before arriving and to monitor their temperatures. Campers were given masks to wear in group settings, although they were not required to wear them when they were in smaller groups of campers they were rooming with, she said.

"I don't think the camp should be penalized or put in a dark light for having camp," she said. "They went above and beyond for these kids to have some sort of normal."

Churches Were Eager to Reopen. Now They Are Confronting Coronavirus Cases.

While major Christian denominations, synagogues and mosques across the country have taken pains to craft detailed reopening plans and impose strict new rules, some of the recent cases appear to have occurred in churches that did not require masks or keep members apart.

In Fort Myers, Fla., Carsyn L. Davis, a high school orchestra member, attended a youth party at her church on June 10 with 100 other children. She did not wear a mask, and children at the event, billed as a "release party" of fellowship and games to celebrate the return of church services, did not stay at a distance, according to a Miami-Dade County medical examiner's report.

Three days after the party, Carsyn, who had asthma and had overcome a rare neurological disorder as a child, developed a headache, sinus pressure and a mild cough. She died on June 23, two days after her 17th birthday.

A pastor at the church, Dustin Zarick, said in a video posted to Facebook that it had canceled all youth activities because "several families had been affected by Covid-19." He said the church had made the "proactive decision" in order to keep members safe.

"Media reports and postings accusing the church of ignoring protocols or actively engaging in behavior intended to expose our congregation to the virus are absolutely false," the church said in an emailed statement to The Times.

Mr. Satterwhite, the pastor in Oregon, said that scrutiny had fallen unfairly on churches, while businesses with outbreaks did not face the same backlash. "I think that there is an effort on the part of some to use things like this to try to shut churches down," he said, adding that he appreciated Mr. Trump's supportive remarks about churches being essential.

When weighing his responsibility as a faith leader, Mr. Satterwhite said, he returned to his beliefs. "My personal belief is, I have faith in God," he said. "If God wants me to get Covid, I'll get Covid. And if God doesn't want me to get Covid, I won't."

Kate Conger reported from Pendleton, Jack Healy from Denver and Lucy Tompkins from New York. Frances Robles contributed reporting from Key West, Fla., and Elizabeth Dias in Washington. Contributing data research were Samone Blair, Sarah Cahalan, Christopher Calabrese, Zak Cassel, Matt Craig, Bianca Fortis, Adeel Hassan, Jacob LaGessee, Alex Lemonides, Paul Moon, Alison Saldanha, Alex Schwartz and Brandon Thorp. Sheelagh McNeill also contributed research.

Churches Were Eager to Reopen. Now They Are Confronting Coronavirus Cases.

PHOTO: At St. Agnes Church in Paterson, N.J., last month, masks and social distancing were evident as the state eased restrictions. (PHOTOGRAPH BY SETH WENIG/ASSOCIATED PRESS)

**Load-Date:** July 14, 2020

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# EXHIBIT GG

## 'It spread like wildfire.' How one man at church with COVID-19 led to 91 cases in Ohio

The Kansas City Star

August 5, 2020 Wednesday

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### THE KANSAS CITY STAR.

Found on KansasCity.com

**Section:** coronavirus

**Length:** 340 words

**Byline:** Chacour Koop

The Kansas City Star

### Body

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A single person attending church with COVID-19 led to an outbreak of nearly 100 cases, showing the risk of group gatherings during the pandemic, Ohio officials say.

The 56-year-old man attended a church service on June 14 while infected with coronavirus, Gov. Mike DeWine says. By the Fourth of July, at least 91 people ranging in age from a 1-year-old girl to a 67-year-old woman had the virus.

"It spread like wildfire," DeWine said.

DeWine tweeted that churches and religious faith "are at the core of our great state and country" but warned of following safety guidelines to prevent spread of COVID-19.

"It is vital that to control the spread of the virus that any time people gather together, including for religious services, that everyone wear masks, practice social distancing, wash hands, and also while indoors, making sure there is good ventilation and airflow," DeWine said.

On Thursday, DeWine's office announced he tested positive for COVID-19 just before a scheduled meeting with President Donald Trump before later testing negative, McClatchy News reported.

'It spread like wildfire.' How one man at church with COVID-19 led to 91 cases in Ohio

A graphic by the Ohio Department of Health shows how the coronavirus spread after the church service.

ohio church graphic

The governor shared other examples of how the virus spreads in group gatherings.

-- A son staying with his dying father was infected while family visited to pay their final respects, leading to the infections of five relatives, including a great-nephew. A party at the great-nephew's house led to two more cases, including a child.

-- At a wedding, the groom's brother was symptomatic but still attended. Fifteen people got sick, including the bride, groom and grandfather.

-- A bridal shower led to six cases in six households.

"None of us want to stay away from our families and of course, it's natural to want to show affection when you see them. But this virus (is) lurking," DeWine tweeted. "Please try to remember that you are showing love by protecting them."

'Don't be like me.' College student talks about getting COVID-19 after Iowa party

**Load-Date:** August 10, 2020

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End of Document

# EXHIBIT HH

## Virus outbreaks in churches continue

The Herald-Dispatch (Huntington, West Virginia)

August 15, 2020 Saturday

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**Section:** A; Pg. 02

**Length:** 704 words

**Byline:** TAYLOR STUCK The HeraldDispatch tstuck@hdmediallc.com, THE HERALD-DISPATCH

### Body

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CHARLESTON Three West Virginia churches, including one in Cabell County, have 42 parishioners with COVID-19, Gov. Jim Justice reported Friday.

The other two churches are in Wood and Taylor counties. The state is not releasing the names of the churches.

Department of Health and Human Resources Secretary Bill Crouch said health officials weighed whether or not the churches with outbreaks should be named, but ultimately decided doing so did more harm than good. He said there were also confidentiality concerns.

"Church members feel having their name publicly mentioned in the media did not help them," said Dr. Ayne Amjad, state health officer. "We reach out to the churches, help them get their services online or find other ways to make their worship safe. But they did feel they were being stigmatized by the media. We are trying to help them and then help the community. It's personal. They want to worship, and we don't want to make it a bad thing for church members."

Crouch said they are considering other groupings of outbreaks to make public.

"We have outbreaks all over, from golf courses to weddings, baby showers and funerals," Crouch said.

There were 123 new positive cases of COVID-19 reported statewide Friday, for a total of 8,274, and four new deaths: a 77-year-old woman from Logan County, an 84-year-old woman from Logan County, a 73-year-



Virus outbreaks in churches continue

old man from Logan County and a 97-year-old man from Mercer County. The total deaths related to COVID-19 is now 157.

Total cases by county are: Barbour (31), Berkeley (727), Boone (114), Braxton (8), Brooke (72), Cabell (436), Calhoun (6), Clay (18), Doddridge (6), Fayette (166), Gilmer (18), Grant (131), Greenbrier (94), Hampshire (86), Hancock (112), Hardy (62), Harrison (240), Jackson (166), Jefferson (303), Kanawha (1,046), Lewis (28), Lincoln (97), Logan (285), Marion (198), Marshall (130), Mason (70), McDowell (65), Mercer (219), Mineral (127), Mingo (198), Monongalia (973), Monroe (20), Morgan (32), Nicholas (40), Ohio (275), Pendleton (42), Pleasants (14), Pocahontas (42), Preston (127), Putnam (207), Raleigh (282), Randolph (213), Ritchie (3), Roane (19), Summers (17), Taylor (61), Tucker (11), Tyler (15), Upshur (38), Wayne (214), Webster (4), Wetzel (44), Wirt (7), Wood (269) and Wyoming (46).

The Cabell-Huntington Health Department reported 206 active cases.

In Kentucky, Gov. Andy Beshear announced the state's early voting plan. Absentee ballots will be available for any Kentucky resident, with a portal to request a ballot going live next week. Early voting will begin Oct. 13, three weeks before the election.

Each county will be in charge of choosing election sites, but each county will have at least one "super center" where everyone in the county can vote regardless of precinct.

The state also lifted a law requiring a photo I.D. to vote because DMVs have been closed, meaning people have not been able to get photo I.D.s. A paper will need to be signed explaining why you do not have an I.D.

Officials said they are going to encourage early voting over absentee, as they expect turnout to be higher than the primary.

There were 697 new positive cases of COVID-19 reported statewide Friday, for a total of 38,298, along with eight new deaths, for a total of 804.

The Ashland-Boyd County Health Department reported six new positive cases: a 78-year-old woman, two 20-year-old women, a 52-year-old man and a 30-year-old man, all isolating at home, and a 38-year-old man hospitalized. There are 21 active cases in the county out of 203 cases.

In Ohio, the Lawrence County Health Department announced three new deaths related to COVID-19 and 12 new positive cases in patients ranging in age from 19 to 85. Details of the deaths were not released, but they bring the total to four. There are 136 active cases in the

Virus outbreaks in churches continue

county, with five hospitalized one new, one a re-admission. One person is in the ICU.

Statewide, 1,131 new positive cases were reported, for a total of 106,557, and 29 new deaths, for a total of 3,784.

Nearly 53,000 new cases of COVID-19 were reported across the U.S. on Friday, for a total of 5,228,817, according to the Centers for Disease Control and Prevention. There have been 166,317 deaths related to the virus.

**Load-Date:** August 17, 2020

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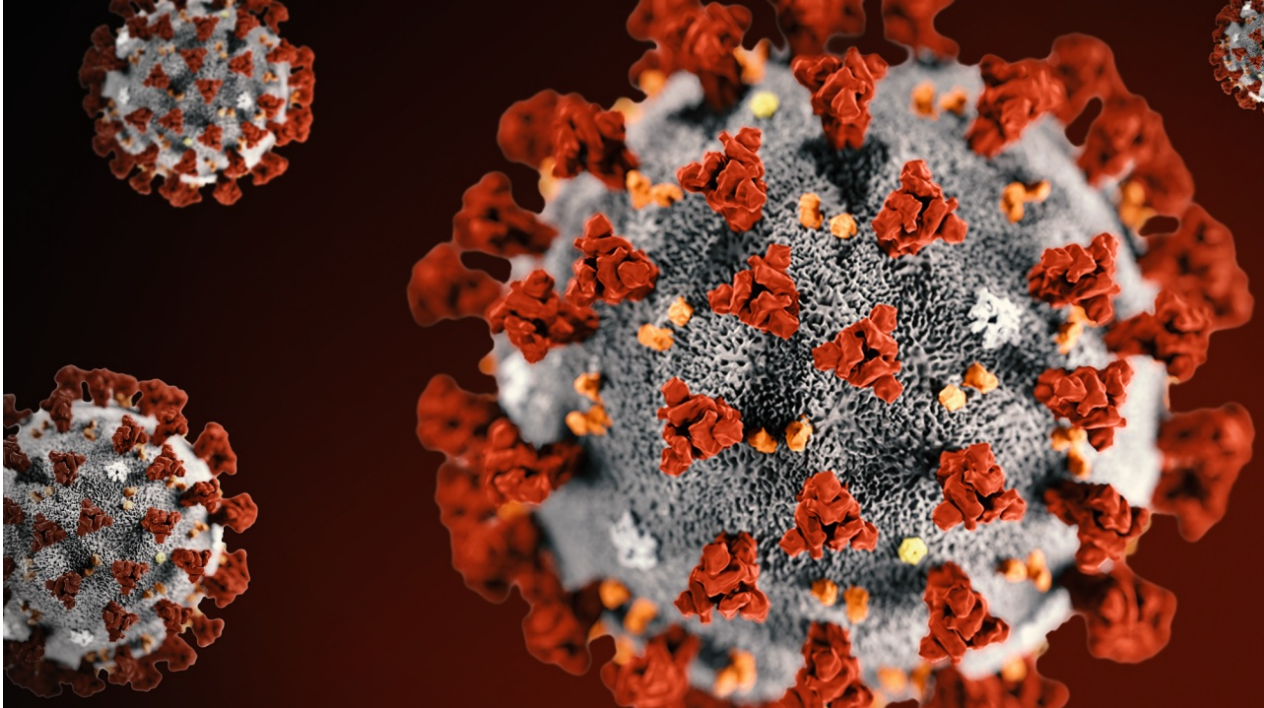
# EXHIBIT II

## Berea church suspends in-person services after COVID-19 outbreak

[lex18.com/news/coronavirus/berea-church-suspends-in-person-services-after-covid-19-outbreak](https://lex18.com/news/coronavirus/berea-church-suspends-in-person-services-after-covid-19-outbreak)

By: Mike Valente

August 12, 2020



BEREA, Ky. (LEX 18) — A church in Berea will be "closed until further notice" for in-person services, following reports of numerous cases of coronavirus within the congregation.

Mark Sarver, the senior pastor at Church on the Rock, confirmed he and his wife are among more than a dozen people connected to the church to have tested positive for the virus.

Sarver told LEX 18 news that he received a phone call from the Madison County Health Department last week notifying him of an outbreak in the congregation. He could not recall the exact number of cases, but he estimated it to be at least twenty.

The church hosted a revival meeting for its own congregation--as well as other churches' congregations--the week of July 27. Sarver estimated there might have been about 200 people in attendance.

When asked if he believes the coronavirus outbreak is connected to the revival, Sarver declined to speculate.

Sarver said he and other church leaders have taken steps to adhere to CDC guidelines, including the practice of physical distancing and wearing masks. He did mention, though, that some people who attended the revival did not wear masks.

The pastor said he and his wife are experiencing mild symptoms and are halfway through their quarantine. He said is not aware of any severe cases in connection to the outbreak.

# EXHIBIT JJ

## Pastor Addresses Coronavirus Outbreak Linked To Windham Church

[P patch.com/new-hampshire/windham/pastor-addresses-coronavirus-outbreak-linked-windham-church](https://patch.com/new-hampshire/windham/pastor-addresses-coronavirus-outbreak-linked-windham-church)

**"Most of the members of the Crossing LIFE Church have been in self-imposed quarantine... for the past three weeks," the pastor said.**

By [Payton Potter, Patch Staff](#)

Aug 10, 2020 7:14 pm ET



New Hampshire health officials are investigating a coronavirus outbreak they say could be tied to Crossing LIFE Church in Windham. (Google Maps)

WINDHAM, NH — The pastor at the center of a coronavirus outbreak tied to a church in Windham said almost three weeks passed between most members with coronavirus entering self-isolation and the Department of Health and Human Services launching an investigation into the outbreak that affected 16 people.



In a release last week, the New Hampshire DHHS said 16 people have tested positive for the virus in connection to a YouthStorm church camp event held at Crossing LIFE Church in Windham from July 16 to 18.

The DHHS urged the public to avoid events at the church throughout the next week while an investigation into the outbreak is underway.

On Monday, Crossing LIFE Church said in a release that senior pastor Shawn Foster first found out that an outbreak in the church was under investigation by DHHS on Friday, almost three weeks after the first positive test result tied to the church was identified.

In working with the DHHS, the church suspended all its services for two weeks and planned a community testing event on church property for Monday. The church further encouraged anyone who had concerns about having been exposed to the virus to get a test either during the event or through another testing provider.

"It is very difficult to determine the source of this virus and an individual carries on many activities and interacts with many people in the course of business each week," Foster wrote in the release. "The members of the Crossing LIFE Church are no different."

Foster said the first known coronavirus case tied to the church was diagnosed in a member of a Windham household in which three other residents in the house tested positive.

"While waiting for test results, this individual observed quarantine guidelines and only exhibited mild symptoms (headache)," Foster wrote.

Members of that household self-isolated for 10 days and waited until they were fever free for at least 24 hours without the help of fever-reducing medications before resuming normal activities.

The release stated most cases connected to the church were isolated to a few households, all the members of which began isolation before exhibiting any symptoms of COVID-19.

Foster said the individuals decided to self-isolate after learning a member of the church had tested positive for the virus despite being asymptomatic.

Most recently, a brother and sister found out on Aug. 1 that they had the virus after being tested on July 21 and 24, respectively. Both had been self-isolating before receiving the positive result, Foster said.

"Out of an abundance of caution, most of the members of the Crossing LIFE Church have been in self-imposed quarantine, which includes not coming to church events for the past three weeks," he said. "Most members have not attended a Sunday service. Many church



members also went for early testing and have already received a negative test result. The Crossing LIFE Church will continue to work with NH DHHS to protect its members and the community."

By phone, Foster told Patch the church is following the governor's guidance for houses of worship including directing the flow of foot traffic, providing hand sanitizing stations and distributing seating so families can socially distance.

He said the church is also operating below its 50 percent capacity limitation, providing two services on Sundays, offering overflow seating so as not to overcrowd the sanctuary and streaming its services online.

Lastly, he added, the church treats its sanctuary with ozone between services to sanitize and clean, and a professional cleaning company is being brought in to further the effort.

"Most church members have been very diligent in following social distancing and quarantining guidelines," Foster wrote in the statement. "Crossing LIFE Church has been in constant communication with its members on COVID-19, Governor's Reopening Guidance and CDC Guidance for house of worship."

# EXHIBIT KK

## COVID-19 outbreak at Athens church

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 [waff.com/2020/08/10/covid-outbreak-athens-church/](https://waff.com/2020/08/10/covid-outbreak-athens-church/)

By Jenna Rae | August 10, 2020 at 4:58 PM CDT - Updated August 10 at 4:58 PM  
ATHENS, Ala. (WAFF) - A church in Athens is closed after several church members tested positive for COVID-19. Oakland Church of Christ Minister Jeff May confirmed the outbreak to WAFF Monday.

May does not know how many members are affected. A church member told WAFF a large majority of members are testing positive for the virus.

In the mean time, the church is offering live-stream services.

Limestone County Commissioner Jason Black says his daughter is currently in quarantine after coming in contact with a member the week prior.

“My daughter was contacted by the school nurse of Limestone County Schools and was told she had come in contact with another student who had tested positive for COVID due to being at a bible study or a church function the previous week,” said Black.

Commissioner Black says 13 other students are quarantining because of exposure as well.

We reached out to Elders of the church for an exact number of cases as well as precautions being taken at the church. We have yet to hear back.

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# EXHIBIT LL



# Coronavirus Disease 2019 (COVID-19)

MENU >

## Cases in the U.S.

Updated August 1, 2020 [Print](#)

TOTAL CASES  
**5, 2,125**  
1, 9 New Cases

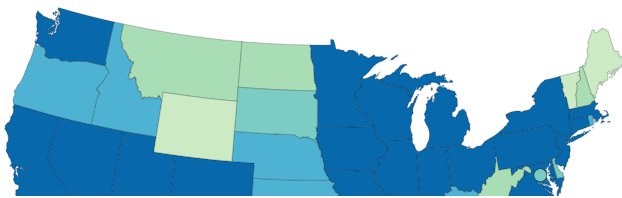
TOTAL DEATHS  
**169, 50**  
65 New Deaths

**Want More Data**  
CDC COVID Data Tracker

This page is updated daily based on data confirmed at 11:00pm ET the day before.

### Cases by jurisdiction

This map shows COVID-19 cases reported by U.S. states, the District of Columbia, New York City, and other U.S.-affiliated jurisdictions. Hover over the maps to see the number of cases reported in each jurisdiction. To go to a jurisdiction's health department website, click on the jurisdiction on the map.



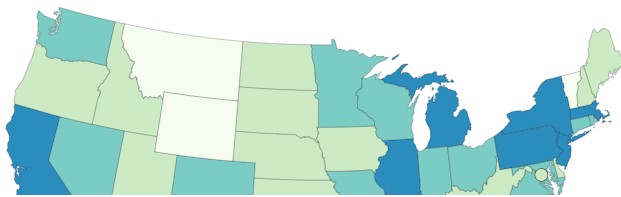
Reported Cases

- 0 to 1,000
- 1,001 to 5,000
- 5,001 to 10,000
- 10,001 to 20,000

[Add U.S. Map to Your Website](#)

### Deaths by jurisdiction

This map shows COVID-19 cases reported by U.S. states, the District of Columbia, New York City, and other U.S.-affiliated jurisdictions. Hover over the maps to see the number of deaths reported in each jurisdiction. To go to a jurisdiction's health department website, click on the jurisdiction on the map.



Reported Deaths

0 to 100       101 to 1,000

1,001 to 5,000       5,001 or more

[Add U.S. Map to Your Website](#)

### Cases Deaths by County

Select a state to view the number of cases and deaths by county. This data is courtesy of [USA acts.org](#)

Select a State ▼

[View County Data](#)

### New Cases by Day

The following chart shows the number of new COVID-19 cases reported each day in the U.S. since the beginning of the outbreak. Hover over the bars to see the number of new cases by day.



### Cases Deaths among Healthcare Personnel

Data were collected from 1,025,600 people, but healthcare personnel status was only available for 95,216 (22.2%) people. For the 16,290 cases of COVID-19 among healthcare personnel, death status was only available for 9,600 (69.4%).

CASES AMONG HCP

16,290

DEATHS AMONG HCP

9,600

### Previous Data

CDC has moved the following information to the [Previous U.S. COVID-19 Case Data](#) page.

[Level of community transmission by jurisdiction](#) last updated May 1, 2020

[Total number of cases by day](#) last updated April 2, 2020

[Number of cases by source of exposure](#) last updated April 16, 2020

[Number of cases from Wuhan, China and the Diamond Princess cruise](#) last updated April 16, 2020

[Number of cases by illness start date](#) last updated April 15, 2020

### More Information

[COVIDView](#) A Weekly Surveillance Summary of U.S. COVID-19 Activity

[Previous U.S. COVID-19 Case Data](#)

[A : COVID-19 Data and Surveillance](#)

[Testing Data in the U.S.](#)

[World Map](#)

[Health Departments](#)

Last Updated Aug. 1, 2020

Content source: [National Center for Immunization and Respiratory Diseases \(NCIRD\)](#), Division of Viral Diseases

# EXHIBIT MM

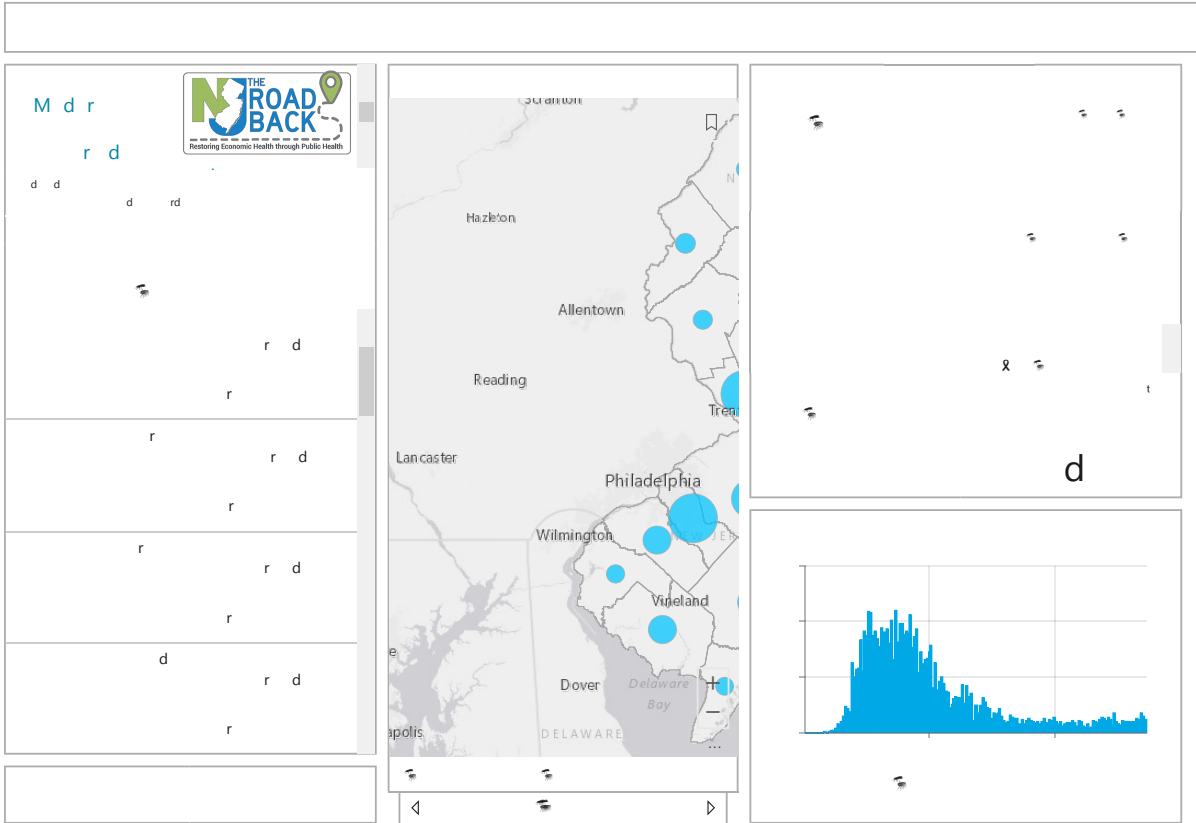


# New Jersey COVID-19

NJ COVID-19 Hub



- Cases and Trends
- Case and Mortality Summaries
- Hospital Census
- Contact Tracing
- Hospital Discharges



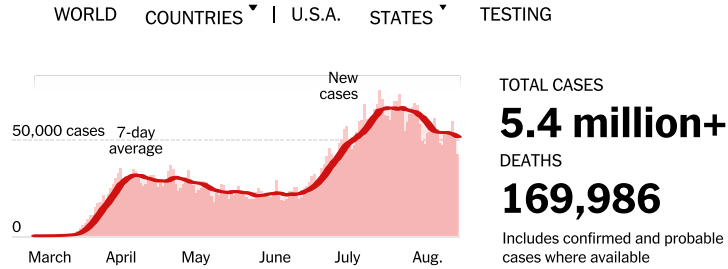
# EXHIBIT NN

The New York Times

<https://nyti.ms/39jvJEY>

# Coronavirus in the U.S.: Latest Map and Case Count

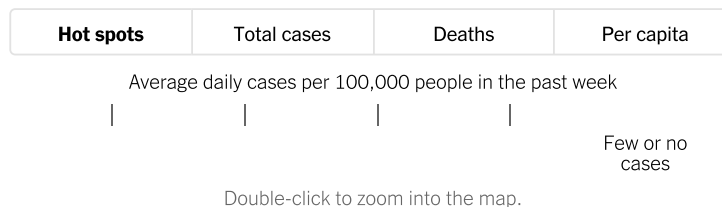
By The New York Times Updated August 17, 2020, 12:24 P.M. E.T.



Map
Cases by state
Hot spots
Clusters
Latest news »

At least 516 new coronavirus deaths and 42,303 new cases were reported in the United States on Aug. 16. Over the past week, there have been an average of 51,523 cases per day, a decrease of 17 percent from the average two weeks earlier.

As of Monday afternoon, more than 5,420,600 people in the United States have been infected with the coronavirus and at least 169,900 have died, according to a New York Times database.



Sources: State and local health agencies and hospitals.

About this data

The hot spots map shows the share of population with a new reported case over the last week. Parts of a county with a population density lower than 10 people per square mile are not shaded. Data for Rhode Island is shown at the state level because county level data is infrequently reported. For total cases and deaths: The map shows the known locations of coronavirus cases by county. Circles are sized by the number of people there who have tested positive or have a probable case of the virus, which may differ from where they contracted the illness. For per capita: Parts of a county with a population density lower than 10 people per square mile are not shaded.

Case numbers remain persistently high across most of the country, though reports of new cases have dropped since late July, when the country averaged well over 60,000 per day. Because the number of people hospitalized and the percentage of people testing positive also rose in many states, the summer case spike cannot be solely explained by increased testing.

Deaths, though still well below their peak spring levels, reached an average of more than 1,000 per day by early August, more than double the average from early July. Some states reimposed limits on businesses and gatherings. Governors and even some mayors announced new restrictions on interstate travel.

## Where new cases are increasing

Cases per capita	Total cases
------------------	-------------

These states have had recent growth in newly reported cases over the last 14 days. The White House released criteria for states to reopen based on a “downward trajectory” of cases over the last 14 days, though it did not define how to measure the trajectory.

### Where new cases are mostly the same

Cases per capita	Total cases
------------------	-------------

### Where new cases are decreasing

Cases per capita	Total cases
------------------	-------------

Note: States and territories are grouped according to how the seven-day average of new cases has changed from two weeks ago to today.

### Where new deaths are increasing

Deaths per capita	Total deaths
-------------------	--------------

These states have had the highest growth in newly reported deaths over the last 14 days. Deaths tend to rise a few weeks after a rise in infections, as there is typically a delay between when people are infected, when they die and when deaths are reported. Some deaths reported in the last two weeks may have occurred much earlier because of these delays.

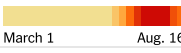


In late February, there were just a few dozen known cases in the United States, most of them linked to travel. But by summer, the virus had torn through every state, infecting more people than the combined populations of Nebraska, Vermont and Montana. The national death toll exceeded 160,000, more than the population of Syracuse, N.Y. And after weeks of progress, reports of new cases reached record levels in July.

### Cases and deaths by state and county

This table is sorted by places with the most cases per 100,000 residents in the last seven days. Charts are colored to reveal when outbreaks emerged.

C

D

	TOTAL CASES	PER 100,000	CASES IN LAST 7 DAYS	▼ PER 100,000	WEEKLY CASES PER CAPITA FEWER MORE
+ Florida MAP »	573,408	2,670	40,610	189	
+ Georgia MAP »	220,165	2,074	20,018	189	
+ U.S. Virgin Islands	760	715	194	183	

	TOTAL CASES	PER 100,000	CASES IN LAST 7 DAYS	▼ PER 100,000	WEEKLY CASES PER CAPITA FEWER MORE
+ Texas MAP »	561,085	1,935	52,759	182	
+ Idaho MAP »	27,794	1,555	2,997	168	
+ Mississippi MAP »	72,412	2,433	4,963	167	
+ Nevada MAP »	61,383	1,993	5,096	165	
+ California MAP »	628,761	1,591	65,264	165	
+ Tennessee MAP »	130,620	1,913	10,832	159	
+ Alabama MAP »	109,004	2,223	7,099	145	

Show all

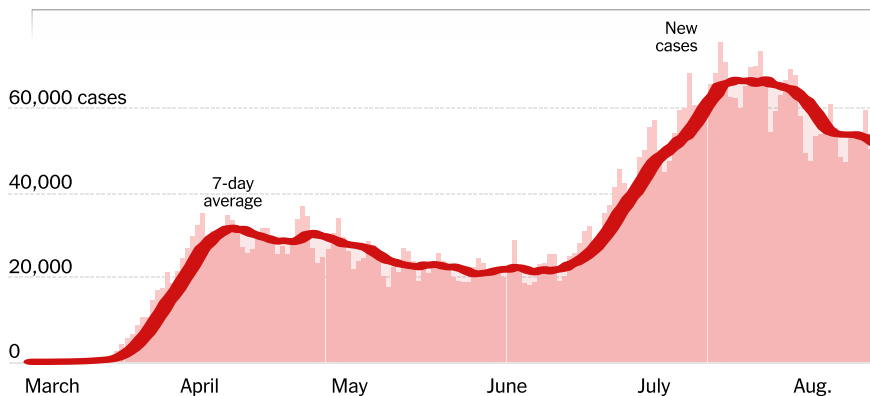
About this data

Weekly cases per capita shows the share of population with a new reported case for each week. Weeks without a reported case are shaded gray. The table includes new cases and deaths that were reported in the last seven days.

See our live coverage of the coronavirus outbreak for the latest news.

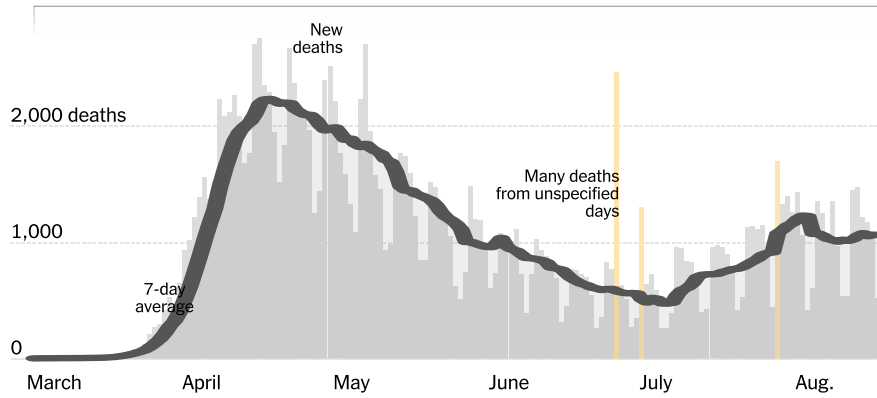
American life has been fundamentally reordered because of the virus. Concerts, parades and baseball games have been called off. Unemployment claims have spiked. Many schools and colleges will hold few or no in-person classes this fall.

**New reported cases by day in the United States**



Note: The seven-day average is the average of a day and the previous six days of data.

### New reported deaths by day in the United States



These are days with a data reporting anomaly. Read more here.

The New York Times has found that official tallies in the United States and in more than a dozen other countries have undercounted deaths during the coronavirus outbreak because of limited testing availability.

The New York Times is engaged in a comprehensive effort to track the details of every coronavirus case in the United States, collecting information from federal, state and local officials around the clock. The numbers in this article are being updated several times a day based on the latest information our journalists are gathering from around the country. The Times has made that data public in hopes of helping researchers and policymakers as they seek to slow the pandemic and prevent future ones.

The Times’s data collection for this page is based on reports from state and local health agencies, a process that is unchanged by the Trump administration’s new requirement that hospitals bypass the Centers for Disease Control and Prevention and send all patient information to a central database in Washington.

See our maps tracking the coronavirus outbreak around the world.

ADVERTISEMENT

### The places hit hardest

The coronavirus has left no state unscathed. But its impact has been wildly uneven.

In New York and California, the states with the most known cases, more than 1 million people have had the coronavirus. In some less populous states, including Vermont and Hawaii, there are fewer than 5,000 patients. And in a handful of remote counties, there has been not even one positive test.

The nation’s most populous places have all suffered tremendously. In Cook County, Ill., which includes Chicago, more than 4,900 people have died. In Los Angeles County, Calif., at least 208,000 people have had the virus. And in New York City, about one of every 360 residents has died.

But unlike in the early days of the pandemic, it is not so simple to say that big cities have been hit hardest. On a per capita basis, many of the places with the most cases have been small cities and rural communities in the Midwest and South.

And in some Sun Belt cities that were spared the worst of the pandemic in April, case and death numbers have surged to fearsome levels in recent weeks. In the county that includes McAllen, Texas, more than 85 percent of all coronavirus deaths have been announced since the start of July. The Miami, Phoenix and Los Angeles areas averaged more than 2,000 cases per day at their peak.

**Hot spots: Counties with the highest number of recent cases per resident**

COUNTY	TOTAL CASES	PER 100,000	CASES IN LAST 7 DAYS	PER 100,000	WEEKLY CASES PER CAPITA	
					FEWER	MORE
Lafayette, Fla.	989	11,743	843	10,009		
Chicot, Ark.	921	9,103	188	1,858		
Suwannee, Fla.	2,253	5,072	799	1,799		
Phillips, Mont.	93	2,352	64	1,619		



COUNTY	TOTAL CASES	PER 100,000	CASES IN LAST 7 DAYS	PER 100,000	WEEKLY CASES PER CAPITA	
					FEWER	MORE
Union, Fla.	488	3,203	178	1,168		
Lincoln, Ark.	1,346	10,335	127	975		
Scott, Kan.	79	1,638	47	974		
Stephens, Texas	131	1,399	89	950		
Lee, Ark.	977	11,031	83	937		
Bee, Texas	1,382	4,244	293	900		

[Show all](#)

Note: Recent cases are from the last seven days.

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## Hundreds of thousands of cases traced to clusters

Coronavirus outbreaks have been traced to funerals, fast food restaurants, cruise ships and Navy vessels. But most of the biggest known clusters have been in nursing homes, food processing plants and correctional facilities, all places where people are packed in close quarters with little opportunity for social distancing.

Coronavirus cases have been reported in more than 17,000 nursing homes and other long-term care facilities, according to data collected by The New York Times from states, counties, the federal government and facilities themselves. More than 382,000 residents and employees have been infected in those homes, and more than 64,000 have died. That means about 40 percent of deaths from the virus in the United States have been tied to nursing homes and other long-term care facilities.

We're tracking the devastating effects of the coronavirus in more than 16,000 nursing homes across the country »

“This disease creates the potential for a perfect storm in a long-term care facility — large groups of vulnerable people living together and a highly transmissible virus that may not cause symptoms in those who care for them,” said Dr. Daniel Rusyniak, the chief medical officer for Indiana’s state social services agency.

In American jails and prisons, more than 140,000 people have been infected and at least 932 inmates and correctional officers have died. During interviews with dozens of inmates across the country, many said they were frightened and frustrated by what prison officials have acknowledged has been an uneven response to the virus.

“I am very concerned,” said Adamu Chan, an inmate at San Quentin State Prison in California, which has become one of the nation’s largest coronavirus clusters with more than 2,400 infections and 23 deaths. “There’s no way to social distance. We all eat together. We have a communal bathroom. There’s no way to address a public health issue in an overcrowded facility.”

CASES CONNECTED TO	CASES
San Quentin State Prison — San Quentin, Calif.	2,608
Marion Correctional Institution — Marion, Ohio	2,443
Miami-Dade County Jail — Miami, Fla.	2,099
Pickaway Correctional Institution — Scioto Township, Ohio	1,795
Avenal State Prison — Avenal, Calif.	1,722
Columbia Correctional Institution — Lake City, Fla.	1,402
Trousdale Turner Correctional Center — Hartsville, Tenn.	1,385
North County jail — Castaic, Calif.	1,384
Ouachita River Unit prison — Malvern, Ark.	1,326
California Institution for Men — Chino, Calif.	1,269

[Show all](#)

## About the data

The Times has identified a reporting anomaly or methodology change in the data for the following dates:

- **June 25:** New Jersey began reporting probable deaths.
- **June 30:** New York City released deaths from earlier periods but did not specify when they were from.
- **July 27:** Texas began reporting deaths based on death certificates, causing a one-day increase.
- To see a detailed list of all reporting anomalies, visit the individual state pages listed at the bottom of this page.

In data for the United States, The Times is now including cases and deaths that have been identified by public health officials as probable coronavirus patients. Some states and counties only report figures in which a coronavirus infection was confirmed through testing. Because confirmed cases are widely considered to be an undercount of the true toll, some state and local governments have started identifying probable cases and deaths using criteria that were developed by states and the federal government.

**Confirmed cases and deaths** are counts of individuals whose coronavirus infections were confirmed by a laboratory test.

**Probable cases and deaths** count individuals who did not have a confirmed test but were evaluated using criteria developed by national and local governments. Some governments are reporting only confirmed cases, while others are reporting both confirmed and probable numbers. And there is also another set of governments that are reporting the two types of numbers combined without providing a way to separate the confirmed from the probable. The Times is now using the total of confirmed and probable counts when they are available individually or combined. Otherwise only the confirmed count will be shown.

Governments often revise data or report a large increase in cases on a single day without historical revisions, which can cause an irregular pattern in the daily reported figures. The Times is excluding these anomalies from seven-day averages when possible.

Read more about the methodology and download county-level data for coronavirus cases in the United States from The New York Times on GitHub.

## Tracking the Coronavirus

### United States

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**Latest Maps and Data**  
Cases and deaths for every county



**Deaths Above Normal**  
The true toll of coronavirus in the U.S.



**Cities and Metro Areas**  
Where it is getting better and worse



**Testing**  
Is your state doing enough?



**Nursing Homes**  
The hardest-hit states and facilities



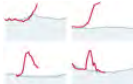
**Reopening**  
Which states are open and closed

### World

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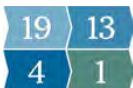
**Latest Maps and Data**  
Cases and deaths for every country



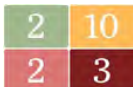
**Deaths Above Normal**  
The true toll of coronavirus around the world

### Health

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**Vaccines**  
Track their development



**Treatments**  
Rated by effectiveness and safety

### Countries

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Brazil

Canada

France	India	Mexico	U.K.
Germany	Italy	Spain	United States

**States, Territories and Cities**

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Alabama	Iowa	New Hampshire	South Dakota
Alaska	Kansas	New Jersey	Tennessee
Arizona	Kentucky	New Mexico	Texas
Arkansas	Louisiana	New York	Utah
California	Maine	New York City	Vermont
Colorado	Maryland	North Carolina	Virginia
Connecticut	Massachusetts	North Dakota	Washington
Delaware	Michigan	Ohio	Washington, D.C.
Florida	Minnesota	Oklahoma	West Virginia
Georgia	Mississippi	Oregon	Wisconsin
Hawaii	Missouri	Pennsylvania	Wyoming
Idaho	Montana	Puerto Rico	
Illinois	Nebraska	Rhode Island	
Indiana	Nevada	South Carolina	

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**What you can do**

Experts’ understanding of how the Covid-19 works is growing. It seems that there are four factors that most likely play a role: how close you get to an infected person; how long you are near that person; whether that person expels viral droplets on or near you; and how much you touch your face afterwards. Here is a guide to the symptoms of Covid-19.

You can help reduce your risk and do your part to protect others by following some basic steps:

- Keep your distance from others. Stay at least six feet away from people outside your household as much as possible.
- Wear a mask outside your home. A mask protects others from your germs, and it protects you from infection as well. The more people who wear masks, the more we all stay safer.

- Wash your hands often. Anytime you come in contact with a surface outside your home, scrub with soap for at least 20 seconds, rinse and then dry your hands with a clean towel.
- Avoid touching your face. The virus can spread when our hands come into contact with the virus, and we touch our nose, mouth or eyes. Try to keep your hands away from your face unless you have just recently washed them.

Here's a complete guide on how you can prepare for the coronavirus outbreak.

Note: Data are based on reports by states and counties at the time of publication. Local governments may revise reported numbers as they get new information. Some deaths may be reported by officials in two different jurisdictions. When possible, deaths have been reported here in the jurisdiction where the death occurred.

\*Cases in New York City, Kansas City, Mo., and Joplin, Mo., each of which span multiple counties, are grouped together. Cases in a state that have been reported without a specific county are listed as county "unknown."

Population and demographic data from Census Bureau.

By Sarah Almkhatar, Aliza Aufrichtig, Matthew Bloch, Julia Calderone, Keith Collins, Matthew Conlen, Lindsey Cook, Gabriel Gianordoli, Amy Harmon, Rich Harris, Adeel Hassan, Jon Huang, Danya Issawi, Danielle Ivory, K.K. Rebecca Lai, Alex Lemonides, Allison McCann, Richard A. Oppel Jr., Jugal K. Patel, Kirk Semple, Julie Walton Shaver, Anjali Singhvi, Charlie Smart, Mitch Smith, Derek Watkins, Timothy Williams, Jin Wu and Karen Yourish. · Reporting was contributed by Jordan Allen, Jeff Arnold, Ian Austen, Mike Baker, Ellen Barry, Samone Blair, Nicholas Bogel-Burroughs, Aurelien Breeden, Elisha Brown, Emma Bubola, Maddie Burakoff, Alyssa Burr, Christopher Calabrese, Sarah Cahalan, Zak Cassel, Robert Chiarito, Matt Craig, Yves De Jesus, Brendon Derr, Brandon Dupré, Melissa Eddy, John Eligon, Timmy Facciola, Bianca Fortis, Matt Furber, Robert Gebeloff, Matthew Goldstein, Grace Gorenflo, Rebecca Griesbach, Benjamin Guggenheim, Lauryn Higgins, Josh Holder, Jake Holland, Jon Huang, Anna Joyce, Ann Hinga Klein, Jacob LaGessee, Alex Lim, Patricia Mazzei, Jesse McKinley, Miles McKinley, K.B. Mensah, Sarah Mervosh, Jacob Meschke, Lauren Messman, Andrea Michelson, Jaylynn Moffat-Mowatt, Steven Moity, Paul Moon, Thomas Gibbons-Neff, Anahad O'Connor, Ashlyn O'Hara, Azi Paybarah, Elian Peltier, Sean Plambeck, Elisabetta Povoledo, Cierra S. Queen, Savannah Redl, Scott Reinhard, Thomas Rivas, Frances Robles, Natasha Rodriguez, Alison Saldanha, Kai Schultz, Alex Schwartz, Emily Schwing, Libby Seline, Sarena Snider, Brandon Thorp, Alex Traub, Maura Turcotte, Tracey Tully, Lisa Waananen Jones, Amy Schoenfeld Walker, Jeremy White, Kristine White and Sameer Yasir. · Data acquisition and additional work contributed by Will Houp, Andrew Chavez, Michael Strickland, Tiff Fehr, Miles Watkins, Josh Williams, Albert Sun, Shelly Seroussi, Nina Pavlich, Carmen Cincotti, Ben Smithgall, Andrew Fischer, Rachel Shorey, Blacki Migliozi, Alastair Coote, Steven Speicher, Hugh Mandeville, Robin Berjon, Thu Trinh, Carolyn Price, James G. Robinson, Phil Wells, Yanxing Yang, Michael Beswetherick, Michael Robles, Nikhil Baradwaj, Ariana Giorgi and Bella Virgilio.

**Correction:** July 20, 2020

The map key in an earlier version of this article was mislabeled. The key showed the average number of new cases in each county per capita per day, not the total number of cases per capita in the previous seven days.

**E H I B I T    O O**



## Experts say US is not doing enough to contain Covid-19 as nation approaches 5 million cases

CNN.com

August 8, 2020 Saturday 7:57 PM EST

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**Section:** HEALTH

**Length:** 1593 words

**Byline:** By Madeline Holcombe and Dakin Andone, CNN

### Body

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The US inched closer to 5 million cases of Covid-19 on Saturday as experts warned the country is still not doing enough to contain the spread of the coronavirus.

"We need to take ownership of this and implement a federal plan by which we bring every state to containment by October," said Dr. Peter Hotez, a professor and Dean of Tropical Medicine at the Baylor College of Medicine, adding that some states have been able to do that already.

"But other parts of the country have a lot of work to do," Hotez told CNN Saturday.

On Saturday, the California Department of Health reported 7,371 new cases and the Florida Department of Health reported more than 8,400 cases. Health officials in Texas said the state's seven-day Covid-19 test positivity rate had risen to 19.41% ? the highest seven-day average since the pandemic began.

"The point is," Hotez said, "it's all doable if we have leadership at the White House that tells us we need to do this."

The US had more than 4.9 million confirmed cases as of Saturday evening, according to data from Johns Hopkins University.

More than 162,000 people have died as a result of Covid-19 since the beginning of the pandemic. But health experts have predicted the national death toll will get worse through the year, and many have called for a stronger national leadership against the virus.

Experts say US is not doing enough to contain Covid-19 as nation approaches 5 million cases

One model from the Institute of Health and Metric Evaluation (IHME) at the University of Washington projects nearly 300,000 deaths in the US by December 1.

Dr. Christopher Murray, the director of IHME, told CNN's Wolf Blitzer Friday that Americans are still moving around too much to adequately slow the spread of the virus.

"If you look at the mobility data collected from cell phones in many parts of the country, we're almost back to pre-Covid levels of mobility, so we're just not being as cautious as other people are in other countries," Murray said.

There is encouraging news: Murray said Friday that the rate of mask use in the US has gone up about 5% in the last 10 days, particularly in states with higher caseloads, like California, Texas and Florida.

That could save tens of thousands of lives. While IHME's model projects more than 295,000 deaths in the US by December 1, it also shows that consistent mask wearing could save more than 66,000 lives.

Nation grapples with economic fallout

Adding to the nation's struggle is the pandemic's economic fallout.

President Donald Trump signed four executive actions on Saturday, including one that would provide \$400 in enhanced unemployment benefits -- 25% of which states are expected to cover -- after negotiations stalled this week over a new stimulus package.

The other three actions signed by the President include a payroll tax holiday for Americans earning less than \$100,000 a year, as well as extending an eviction moratorium and deferring student loan payments.

The actions are likely to be challenged by Democrats in court.

Up to 40 million Americans risk eviction by the end of the year, according to a report published Friday by the Aspen Institute. And while the US economy added another 1.8 million jobs in July, it was a slowdown from the 4.8 million jobs added in June and a small step for an economy still down 12.9 million jobs during the pandemic.

In Los Angeles Friday, cars lined up at a backpack and food giveaway for families of students. Among them was Henry Herrera, a father of two who said he's unemployed due to the pandemic.

On Friday he was able to get backpacks and food for his children who rely on school meal plans for breakfast and lunch. Herrera showed CNN a box full of fresh produce like apples, potatoes and carrots.

Experts say US is not doing enough to contain Covid-19 as nation approaches 5 million cases

"That's really helped out a lot, because with Covid-19 I ain't able to work. We're struggling here and there to make ends meet," Herrera said, adding, "but we're doing it though."

The Covid-19 pandemic has disproportionately impacted the poor, in addition to older populations and people with chronic conditions, explained Dr. Richard Seidman, the chief medical officer at L.A. Care Health Plan, one of the hosts of the drive-thru event.

"The communities with the highest rates of poverty also have the highest rates of infections and deaths," Seidman told CNN. "So the longer this drags on ? and unfortunately with some of the challenges at the national level with Congress failing to pass and extend some of the financial aid benefits ? it pushes some people that much more into poverty."

Rethinking testing

One important factor to reopening the US while maintaining safety is rethinking the national strategy on testing for the virus, said Dr. Rajiv Shah, president of the Rockefeller Foundation and former USAID administrator.

Currently, only symptomatic people are frequently tested, meaning 40% to 50% of all spreaders, those who don't show symptoms, aren't being tested and told they may be contagious, he said.

"You have to know that as soon as possible, and then limit transmission from that node of contagion," he said during an Aspen Ideas webinar on Friday. "That's the whole ball game."

But even testing primarily symptomatic people been impacted by backlog, many states report.

The Virginia Department of Health reported a sharp increase of cases on Friday, but that increase came from a technical issue and a backlog from the two days prior, according to a statement.

And Miami-Dade County, the hotspot for cases in Florida, continues to struggle with a lag in testing results, according to state data obtained by CNN.

One day in the past week, testing labs reported that 19.2% of test results took more than seven days to deliver. On a different day, 45% of test results took between four and seven days.

Precautions matter for children, too

Experts say US is not doing enough to contain Covid-19 as nation approaches 5 million cases

Researchers are learning more about how the virus spreads among children.

A new report from the Centers for Disease Control and Prevention supports the early belief that most coronavirus cases in children appear to be either asymptomatic or mild. But, the report said, when children are hospitalized, they need the intensive care unit as often as adults do.

To slow the pandemic, the CDC said children should be encouraged to wash their hands often, keep a good physical distance away from others, and if they are 2 years of age or older, they should wear a mask when they are around people outside of their family members.

One rare but serious complication children can develop from a coronavirus infection is known as multisystem inflammatory syndrome, or MIS-C, and at least 570 cases have been reported, the CDC said.

As the pandemic continues, health care providers should be on the lookout for the syndrome that most commonly causes abdominal pain, vomiting and a skin rash.

More than 74% of the cases were among Hispanic and Black children, the CDC said.

The report comes as schools reopen for the new school year, including in the largest school district in Georgia, where teachers are protesting the decision to resume in-person instruction on August 26, after just two weeks of online learning.

At least 263 Gwinnett County employees have already tested positive for Covid-19 or are in quarantine, and school hasn't even started.

"It seems like standardized test scores matter a whole lot to this county," teacher Brian Westlake told CNN's Natasha Chen. "But Covid test scores don't seem to matter enough."

Dr. Marybeth Sexton, an assistant professor of infectious disease at Emory University, warned that with community spread, there's a risk of students and staff showing up with Covid-19.

"With the degree of cases we're still seeing in the Metro Atlanta area and a lot of places throughout the United States, it means on the first day of classes, you're going to have a certain percentage of students and faculty who show up who are already infected," she said.

She said masks were vital for the safety of not only everyone in the school building, but also the wider community. "Those students are

Experts say US is not doing enough to contain Covid-19 as nation approaches 5 million cases

going home to family members who may be vulnerable, and the teachers, the school bus drivers, the school custodians, the people who work in the cafeteria -- all of those people are at risk, too."

Cases rise as country nears new milestone

State and local leaders across the country continue to try and contain the spread of the coronavirus as the number of US cases nears 5 million cases.

South Carolina's Department of Health and Environmental Control (DHEC) on Saturday announced a new "Fight the Spread" campaign, encouraging residents to wear masks, practice social distancing and get tested. The state reported 1,178 new cases, bringing the statewide total to more than 98,700, according to DHEC.

Wisconsin saw its highest daily new case count on Saturday, with 1,165 reported cases, according to the Wisconsin Department of Health Services, bringing the statewide total to 59,933 reported cases.

Illinois reported 2,190 new cases on Saturday -- the second day in a row that the state's health department reported more than 2,000 new Covid-19 positive cases. It was the highest daily reported case count since May 24, when the department reported 2,508 new cases. Statewide, there are more than 192,698 cases, according to the department of health.

Texas Gov. Greg Abbott extended his state's Covid-19 disaster declaration on Saturday, nearly 5 months after it was first issued on March 13 to help Texas counties fight the pandemic.

"I urge Texans to remain vigilant in our fight against this virus," Abbott said in a statement. "Everyone must do their part to slow the spread of COVID-19 by wearing a mask, practicing social distancing and washing your hands frequently and thoroughly."

**Load-Date:** August 8, 2020





## Coronavirus Disease 2019 (COVID-19)

MENU >



## Deciding to go Out

Updated July 10, 2020

[Print](#)

### What you need to know

In general, the more closely you interact with others and the longer that interaction, the higher the risk of COVID-19 spread.

If you decide to engage in public activities, continue to protect yourself by [practicing everyday preventive actions](#).

Keep these items on hand when venturing out: a mask, tissues, and a hand sanitizer with at least 60% alcohol, if possible.

## Understand the potential risks of going out

As communities and businesses are opening, you may be looking for ways to resume some daily activities as safely as possible. While there is no way to ensure zero risk of infection, it is important to understand potential risks and how to adopt different types of prevention measures to protect yourself and to help reduce the spread of COVID-19.

The risk of an activity depends on many factors, such as:

Is COVID-19 spreading in your community

Will you have a potential close contact with someone who is sick or anyone who is not wearing a mask (and may be asymptomatic)

Are you at increased risk of severe illness

Do you take everyday actions to protect yourself from COVID-19

CDC cannot provide the specific risk level for every activity in every community. That's why it's important for you to consider your own personal situation and the risk for you, your family, and your community before venturing out.

## Close contact with other people increases risk

In general, **the more closely you interact with others and the longer that interaction, the higher the risk of COVID-19**

spread. So, think about:

### How many *people* will you interact with

Interacting with *more people* raises your risk.

Being in a group with people who aren't social distancing or wearing *masks* increases your risk.

Engaging with new people (e.g., those who don't live with you) also raises your risk.

Some people have the virus and don't have any symptoms, and it is not yet known how often people without symptoms can transmit the virus to others.

### Can you keep a *space* between you and others? Will you be outdoors or indoors?

The *closer* you are to other people who may be infected, the greater your risk of getting sick.

Keeping distance from other people is especially important for people who are at *higher risk for severe illness*, such as older adults and those with underlying medical conditions.

Indoor spaces are more risky than outdoor spaces where it might be harder to keep people apart and there's less ventilation.

### What's the *length of time* that you will interact with people?

Spending *more time* with people who may be infected increases your risk of becoming infected.

Spending more time with people increases *their* risk of becoming infected if there is any chance that you may already be infected.

## What makes activities safer?

Activities are safer if

You can maintain at least 6 feet of space between you and others. COVID-19 spreads easier between people who are within 6 feet of each other.

They are held in outdoor spaces. Indoor spaces with less ventilation where it might be harder to keep people apart are more risky.

People are wearing masks. Interacting without wearing masks also increases your risk.

### Stay home if you are sick

If you have COVID-19, *have symptoms consistent with COVID-19*, or have been in *close contact* with someone who has COVID-19, it is important to stay home and away from other people. When you can leave home and be around others depends on different factors for different situations. Follow CDC's *recommendations* for your circumstances.

## Consider the risks before you go

Asking these questions can help determine your level of risk.

Is COVID-19 spreading in my community?

Find out by viewing the latest *COVID-19 information* and a *map of states with reported COVID-19 infections*.

What are the local orders in my community?





Do I know what to do if I get sick now the steps to help prevent the spread of COVID-19 if you are sick.

## Be prepared and stay safe

If you decide to engage in public activities, continue to protect yourself by practicing everyday preventive actions.

Items to have on hand

- A mask
- Tissues
- Hand sanitizer with at least 60% alcohol, if possible

Get more tips to keep you and others safe when you venture out

- [Running Essential Errands](#)
- [Doctor Visits and Getting Medicines](#)
- [Personal and Social Activities](#)

### More Information

- |   |  |
|---|--|
| <a href="#">Protect Yourself When Using Public Transit</a>        | <a href="#">Considerations for Schools</a>                               |
| <a href="#">Considerations for Youth and Summer Camps</a>         | <a href="#">Considerations for Restaurants and Bars</a>                  |
| <a href="#">Considerations for Institutes of Higher Education</a> | <a href="#">Considerations for Pools, Hot Tubs, and Water Playground</a> |
| <a href="#">Considerations for Youth Sports</a>                   | <a href="#">Managing Stress and Anxiety</a>                              |

Last Updated July 10, 2020

Content source: National Center for Immunization and Respiratory Diseases (NCIRD), Division of Viral Diseases