

No. 20-569

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

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

Petitioners,

v.

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

Respondent.

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

**AMICUS BRIEF OF THE AMERICAN CENTER FOR
LAW AND JUSTICE IN SUPPORT OF
PETITIONERS**

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INTEREST OF AMICUS*

The American Center for Law and Justice (ACLJ) is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys often appear before this Court as counsel either for a party, *e.g.*, *Pleasant Grove City v. Sumnum*, 555 U.S. 460 (2009), or for amicus, *e.g.*, *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246 (2020). The ACLJ is dedicated, inter alia, to religious liberty and freedom of speech.

SUMMARY OF THE ARGUMENT

Review is necessary here for all the reasons set forth in the petition for certiorari. Additionally, amicus urges this Court to grant summary reversal of the Seventh Circuit's ruling that Order 32 did not unconstitutionally target religion by limiting religious worship to ten persons while imposing no limit with respect to other activities in the same churches. Order 32's religious gerrymander is indefensible under settled Free Exercise Clause law.

*Counsel of record for the parties received notice of the intent to file this brief and emailed written consent to its filing. No counsel for any party in this case authored this brief in whole or in part. No person or entity aside from Amicus, their members, or their respective counsel made a monetary contribution to the preparation or submission of this brief.

ARGUMENT

Order 32 restricts in-person worship services to 10 persons within religious facilities but allows unlimited numbers to assemble in the same buildings to receive social services including meals, shelter, education and counseling. Order 32 thus allows petitioners to provide secular services for, say, 100 people, but *religious* services for only 10 of those same people, at the same time, in the same place. One hundred people can eat a meal in the building but only 10 can receive communion. When petitioners are teaching or feeding or sheltering 100 people but then begin religious worship service with those same people, 90 of them must leave. This is utterly irrational.

Further, it is unconstitutional. The Free Exercise Clause forbids laws with the object of suppressing religious worship or imposing a special disability on religious practice. Order 32's religious gerrymander accomplishes both.

I. Summary Reversal Is Appropriate Here.

Summary reversal is appropriate where the court below has "egregiously misapplied settled law." *Wearry v. Cain*, 136 S. Ct. 1002, 1007 (2016). Disregard of a controlling decision from this Court is grounds for summary reversal. *See, e.g., Thompson v. Hebdon*, 140 S. Ct. 348 (2019) (granting summary reversal where lower court ignored controlling decision in *Randall v. Sorrell*, 548 U.S. 230 (2006)). *See generally* Eugene Gressman *et al.*, *Supreme Court Practice* 344 (9th ed. 2007) (noting that summary

reversal is granted where “the lower court result is clearly erroneous, particularly if there is a controlling Supreme Court precedent to the contrary.”) (cleaned up). Settled Free Exercise Clause law requires that Order 32’s discriminatory restrictions on religious worship be held unconstitutional.

II. The Seventh Circuit Refused to Apply Settled Free Exercise Clause Law to Order 32’s Imposition of a Special Disability on Religious Worship.

Enshrined in the Free Exercise Clause is the principle that government may not suppress religious belief or practice. *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 523 (1993). This principle is “so well understood” that there are few cases in which it has been violated. *Id.* Laws that subject religious entities to unequal treatment or that impose special disabilities based on religious status must undergo the strictest scrutiny. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2019 (2017) (cleaned up).

This Court’s decision in *Lukumi*, which struck down laws banning certain forms of religious worship, 508 U.S. at 532, required the Seventh Circuit to hold unconstitutional Order 32’s religious gerrymandering. In *Lukumi*, three ordinances facially prohibited animal killings but in fact targeted only sacrificial rituals essential to the Santeria religion. *Id.* at 535. The laws did not apply to animal killings performed for numerous secular reasons but prohibited only those associated with Santeria animal sacrifice. *Id.* at

542. Because the ordinances had as their object the suppression of religion, they failed strict scrutiny. *Id.* at 534, 546.

Worse than the ordinances in *Lukumi*, Order 32 does not even try to hide behind a pretext of facial neutrality. The Order blatantly targets religious worship for third class treatment by subjecting it to a unique disability inapplicable to all the other activities in the churches. Secular activities are permissible without any numerical limit on persons attending but religious worship is restricted to ten persons. Under *Lukumi*, Order 32's religious gerrymander cannot survive strict scrutiny. *See id.* at 546. Indeed, given the general scientific consensus about how the coronavirus is transmitted,¹ Order 32's religious gerrymander could not even satisfy rational basis review.

¹ *See, e.g., Coronavirus disease (COVID-19): How is it transmitted?* World Health Organization (last updated Oct. 20, 2020), <https://www.who.int/news-room/q-a-detail/coronavirus-disease-covid-19-how-is-it-transmitted>,

CONCLUSION

Amicus respectfully requests this Court to grant review and summarily reverse the lower court's ruling that Order 32's discriminatory treatment of religious worship is constitutional.

Respectfully submitted,

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