No. 20A87

In the

Supreme Court of the United States

THE ROMAN CATHOLIC DIOCESE OF BROOKLYN, NEW YORK,

Applicant,

v.

GOVERNOR ANDREW M. CUOMO, in his official capacity,

Respondent.

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(COVID-19) pandemic

Coronavirus disease

State of New York

Executive Chamber

No. 202.6

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York;

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to be continue;

WHEREAS, in order to facilitate the most timely and effective response to the COVID 19 emergency disaster, it is critical for New York State to be able to act quickly to gather, coordinate, and deploy goods, services, professionals, and volunteers of all kinds; and

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, I hereby temporarily suspend or modify, for the period from the date of this Executive Order through April 17, 2020 the following:

- Section three of the Public Officer's Law shall not apply to an individual who is deemed necessary to hire or to engage in a volunteer capacity to provide for an effective and efficient emergency response, for the duration of such emergency;
- Subparagraph (i) of subdivision 1 of section 73 of the Public Officers Law Section shall not apply to any person who is hired, retained, appointed, or who volunteers in any way to assist New York State in its response to the declared emergency;
- Subparagraph 5 of section 73 of the Public Officers Law Section shall not apply to a state officer or employee, or a volunteer who is facilitating contributions or donations to assist New York State in its response to the declared emergency;
- Subparagraph 8 of section 73 of the Public Officers Law Section 73(8) and section 74 of the Public Officer's Law shall not apply to volunteers or contractors who assist New York State in its response, provided that any recusals shall be adhered to if determined necessary by the appointing entity;
- Legislative Law Section 1-M is suspended to the extent that any agency may receive a donation in kind or otherwise, in any amount from any source, provided such donation is made to the State and is administered by a state agency in furtherance of the response effort;
- State Finance Law Section 11, to the extent necessary to facilitate an efficient and effective New York State emergency disaster response, shall not apply to any state agency efforts to further the response to the declared emergency;

NOW, THEREFORE, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to issue any directive during a disaster emergency necessary to cope with the disaster, I hereby issue the following directives for the period from the date of Executive Order through April 17, 2020:

- Effective on March 20 at 8 p.m.: All businesses and not-for-profit entities in the state shall utilize, to the maximum extent possible, any telecommuting or work from home procedures that they can safely utilize. Each employer shall reduce the in-person workforce at any work locations by 50% no later than March 20 at 8 p.m. Any essential business or entity providing essential services or functions shall not be subject to the in-person restrictions. This includes essential health care operations including research and laboratory services; essential infrastructure including utilities, telecommunication, airports and transportation infrastructure; essential manufacturing, including food processing and pharmaceuticals; essential retail including grocery stores and pharmacies; essential services including trash collection, mail, and shipping services; news media; banks and related financial institutions; providers of basic necessities to economically disadvantaged populations; construction; vendors of essential services necessary to maintain the safety, sanitation and essential operations of residences or other essential businesses; vendors that provide essential services or products, including logistics and technology support, child care and services needed to ensure the continuing operation of government agencies and provide for the health, safety and welfare of the public;

- Any other business may be deemed essential after requesting an opinion from the Empire State Development Corporation, which shall review and grant such request, should it determine that it is in the best interest of the state to have the workforce continue at full capacity in order to properly respond to this disaster. No later than 5 p.m. on March 19, 2020, Empire State Development Corporation shall issue guidance as to which businesses are determined to be essential.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this eighteenth day of March in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

Religious Leaders Say Worshiping at Home Is Most Ethical: 'The Command Is to Love One Another'

Across faiths, leaders agree that staying home is the best way to care for one another's health and safety during the Coronavirus pandemic

By **Sheila Cosgrove Baylis**

April 09, 2020 05:01 PM

PHOTO: JESSE JOHNSON

While some churches have been in the spotlight for continuing large in-person services during the coronavirus pandemic, many Christian pastors and religious leaders of other faiths say virtual gatherings are the most responsible and compassionate option for worship.

"We want to gather as people of faith; it's really vital to who we are," says Kevin Bradley, pastor of Crawford Street United Methodist Church in Vicksburg, Mississippi. "But the question for me became, 'How can we love one another in this

season?' I think it's responsibility over recklessness and I think the responsible thing to do is social distancing."

"The command is to 'love one another,' so how can we love one another? When government officials and medical experts are saying this is the right thing to do — we can best demonstrate loving relationships with each other and take care of each other with some safe distancing," he tells PEOPLE.

Bradley, 56, a pastor for 17 years, began remote services on March 15 and offers a recorded service each Sunday morning that is available on Facebook and YouTube.

He made the decision to lead the congregation remotely after careful thought and prayer, he says, but also using something he calls 'the grandmother test,' which he typically applies in dangerous situations like hurricanes or tornadoes.

"We all have or know grandmothers who, if the church doors are open, are going to come to church. So I ask myself, 'Would I want my grandmother in church in these conditions?' And the answer right now is 'no' because they are the most at-risk at this time."

Rabbi Aaron Schonbrun, 43, from Torat El in Oakhurst, New Jersey, agrees: "To me it was important to keep people safe, that was my number one concern. But number two was, 'How long is this going to be going on?' People need contact. Religion, synagogues, all are built around relationships. It's at the center of what we do. So I had to think, 'How am I going to maintain relationships if we can't be together?' That pushed me quickly to say, we are going to do this virtually on Shabbat, we are going to do this on Passover. At least we can see each other," he tells PEOPLE.

"Every time I go on Zoom — Is it a little strange that we're all sitting in front of our computer like *The Brady Bunch*? Sure. But we see each other. I have to say, my service attendance is actually up," he laughs. "Because people are popping in just for a touchpoint."

Brett Harris, co-pastor at University Baptist Church in Hattiesburg, Mississippi, also says attendance to virtual services has been solid and he's seen "even an increase in participation."

"The first reported case in Mississippi was on March 11th, and by the 15th we were doing virtual services. We were trying to be proactive. We have a Facebook Live every Sunday and we're using Zoom for our small study groups," he tells PEOPLE. He and co-pastor Kat Kimmel have created a guide to do "Holy Week at Home" and also collaborated with pastors from eight other churches to bring daily online reflections to the community throughout Holy Week.

"There's been some really good things that have come out of this tough time," Harris, 36, says. The church members "are still getting something out of the experience even if it's wildly different than having their seat in a pew." He says he doesn't understand why some churches are still meeting in person. "Having seen the great response we've had from our people and their willingness to do what's best for our community, I don't know what is to be gained from meeting in person during this crisis. We're still worshipping and praying alongside each other, just in a new way."

"To me it was a pretty easy decision to live out the idea of loving our neighbors as ourselves, knowing that none of us want to get sick and we don't want anybody else to get sick."

RELATED VIDEO: 90-Year-Old Recovers From Coronavirus

Dr. Omid Safi, Professor of Middle Eastern Studies at Duke University, Director of Illuminated Courses and author of *Radical Love: Teachings from The Islamic Mystical Tradition* agrees that love is the way to find God in these difficult times.

"I don't think we're going to find God by coming up with some moral explanation about why people are being punished. I think that we can look for God in our response to the virus," he tells PEOPLE.

"When you look at people clapping for the health workers, for people who are knowingly putting themselves in a position of risk, extending themselves in love and in service to others ... When we're overwhelmed, we stand up and we applaud — not bluster and not ego and greed — but we applaud love and service. I look also to the people keeping the grocery stores open, to the people who are checking in on the elderly, on little invisible acts of goodness and kindness; and I think that's where God is."

Additionally, Dr. Safi says using this time to turn inward can be beneficial. "In the Islamic tradition, there's more than a thousand years of insight on the role of retreats. I think that's a meaningful set of teachings to tap into right now, because it helps us think about our lives as having waves of activity — there's a time for going out into the public square and having social interaction — and then there's time for repose and going inward. I think the difference is traditionally, one would choose to go on retreat, whereas now we're being forced to go into a retreat so the dynamics are different, and of course people's health and home situations are different."

For those who miss in-person contact with their spiritual community, "that means you have something to be grateful for," Dr. Safi says. "Rumi says, 'Before you find the water you have to have thirst,' and that your thirst is actually what guides you to the water. I think for people who miss in-person rituals it says to them that the rituals of their church, mosque or synagogue are meaningful to them. And that's not the case for so many people. So the missing of it, at this stage of things, is something to be thankful for."

With reporting by Stephanie Emma Pfeffer

As information about the coronavirus pandemic rapidly changes, PEOPLE *is committed to providing the most recent data in our coverage. Some of the information in this story may have changed after publication. For the latest on COVID-19, readers are encouraged to use online resources from CDC, WHO, and local public health departments. To help provide doctors and nurses on the front lines with life-saving medical resources, donate to Direct Relief here.*

Centers for Disease Control and Prevention

Coronavirus Disease 2019 (COVID-19)

MENU >

Considerations for Communities of Faith
Considerations for Communities of Faith

Updated May 23, 2020 Print

CDC offers the following general considerations to help communities of faith discern how best to practice their beliefs while keeping their staff and congregations safe. Millions of Americans embrace worship as an essential part of life. For many faith traditions, gathering together for worship is at the heart of what it means to be a community of faith. But as Americans are now aware, gatherings present a risk for increasing spread of COVID-19 during this Public Health Emergency. CDC offers these suggestions for faith communities to consider and accept, reject, or modify, consistent with their own faith traditions, in the course of preparing to reconvene for in-person gatherings while still working to prevent the spread of COVID-19.

This guidance is not intended to infringe on rights protected by the First Amendment to the U.S. Constitution or any other federal law, including the Religious Freedom Restoration Act of 1993 (RFRA). The federal government may not prescribe standards for interactions of faith communities in houses of worship, and in accordance with the First Amendment, no faith community should be asked to adopt any mitigation strategies that are more stringent than the mitigation strategies asked of similarly situated entities or activities.

In addition, we note that while many types of gatherings are important for civic and economic well-being, religious worship has particularly profound significance to communities and individuals, including as a right protected by the First Amendment. State and local authorities are reminded to take this vital right into account when establishing their own re-opening plans.

Scaling Up Operations

- Establish and maintain communication with local and State authorities to determine current mitigation levels in your community.
- Provide protections for staff and congregants at higher risk for severe illness from COVID-19. Offer options for staff at higher risk for severe illness (including older adults and people of all ages with certain underlying medical conditions) that limit their exposure risk. Offer options for congregants at higher risk of severe illness that limit their exposure risk (e.g., remote participation in services).
- Consistent with applicable federal and State laws and regulations, put in place policies that protect the privacy and confidentiality of people at higher risk for severe illness regarding underlying medical conditions.
- Encourage any organizations that share or use the facilities to also follow these considerations as applicable.
- If your community provides social services in the facility as part of its mission, consult CDC's information for schools and businesses and workplaces, as relevant, for helpful information.

Safety Actions

Promote healthy hygiene practices

- Encourage staff and congregants to maintain good hand hygiene, washing hands with soap and water for at least 20 seconds.
- Have adequate supplies to support healthy hygiene behaviors, including soap, hand sanitizer with at least 60 percent alcohol (for those who can safely use hand sanitizer), tissues, and no-touch trash cans.

- Encourage staff and congregants to cover coughs and sneezes with a tissue or use the inside of their elbow. Used tissues should be thrown in the trash and hands washed.
- Whenever soap and water are not readily available, hand sanitizer with at least 60% alcohol can be used.
- Consider posting signs on how to stop the spread of COVID-19 and how to promote everyday protective measures , such as washing hands, covering coughs and sneezes, and properly wearing a mask .

Masks

- Encourage use of masks among staff and congregants. Masks are most essential when social distancing is difficult. Note: Masks should not be placed on children younger than 2 years old, anyone who has trouble breathing or is unconscious, and anyone who is incapacitated or otherwise unable to remove the mask without assistance. Masks are meant to protect other people in case the wearer is unknowingly infected but does not have symptoms.

Intensify cleaning, disinfection, and ventilation

- Clean and disinfect frequently touched surfaces at least daily and shared objects in between uses.
- Develop a schedule of increased, routine cleaning and disinfection.
- Avoid use of items that are not easily cleaned, sanitized, or disinfected.
- Ensure safe and correct application of disinfectants and keep them away from children.
- Cleaning products should not be used near children, and staff should ensure that there is adequate ventilation when using these products to prevent children or themselves from inhaling toxic fumes.
- Ensure that ventilation systems operate properly and increase circulation of outdoor air as much as possible by opening windows and doors, using fans, etc. Do not open windows and doors if they pose a safety risk to children using the facility.
- If your faith community offers multiple services, consider scheduling services far enough apart to allow time for cleaning and disinfecting high-touch surfaces between services. Take steps to ensure that all water systems and features (for example, drinking fountains, decorative fountains) are safe to use after a prolonged facility shutdown to minimize the risk of Legionnaires' disease and other diseases associated with water.

Promote social distancing

- Take steps to limit the size of gatherings in accordance with the guidance and directives of state and local authorities and subject to the protections of the First Amendment and any other applicable federal law.
- Promote social distancing at services and other gatherings, ensuring that clergy, staff, choir, volunteers and attendees at the services follow social distancing, as circumstances and faith traditions allow, to lessen their risk.
- Consider holding services and gatherings in a large, well-ventilated area or outdoors, as circumstances and faith traditions allow.
- Consider appropriate mitigation measures, including taking steps to limit the size of gatherings maintaining social distancing, at other gatherings such as funerals, weddings, religious education classes, youth events, support groups and any other programming, where consistent with the faith tradition.
- Provide physical guides, such as tape on floors or walkways and signs on walls, to ensure that staff and children remain at least 6 feet apart in lines and at other times (e.g. guides for creating "one-way routes" in hallways).

Take steps to minimize community sharing of worship materials and other items

- Consistent with the community's faith tradition, consider temporarily limiting the sharing of frequently touched objects, such as worship aids, prayer rugs, prayer books, hymnals, religious texts and other bulletins, books, or other items passed or shared among congregants, and encouraging congregants to bring their own such items, if possible, or photocopying or projecting prayers, songs, and texts using electronic means.
- Modify the methods used to receive financial contributions. Consider a stationary collection box, the main, or electronic methods of collection regular financial contributions instead of shared collection trays or baskets.
- Consider whether physical contact (e.g., shaking hands, hugging, or kissing) can be limited among members of the faith community.

- If food is offered at any event, consider pre-packaged options, and avoid buffet or family-style meals if possible.

Nursery/Childcare

- If a nursery or childcare will be provided during services and events, refer to CDC's information on preventing the spread of COVID-19 in childcare settings and adapt as needed for your setting.
- If holding summer day camps, refer to CDC's information on youth and summer camps and adapt as needed.

Staffing and Training

- Train all clergy and staff in the above safety actions. Consider conducting the training virtually, or, if in-person, ensure that social distancing is maintained.

Monitoring and Preparing

Check for signs and symptoms

- Encourage staff or congregants who are sick or who have had close contact with a person with COVID-19 to stay home. Share CDC's criteria for staying home with staff and congregants so that they know how to care for themselves and others. Consider posting signs at entrances with this information.

Plan for when a staff member or congregant becomes sick

- Identify an area to separate anyone who exhibits symptoms of COVID-19 during hours of operation, and ensure that children are not left without adult supervision.
- Establish procedures for safely transporting anyone who becomes sick at the facility to their home or a healthcare facility.
- Notify local health officials if a person diagnosed with COVID-19 has been in the facility and communicate with staff and congregants about potential exposure while maintaining confidentiality as required by the Americans with Disabilities Act (ADA) or other applicable laws and in accordance with religious practices.
- Advise those with exposure to a person diagnosed with COVID-19 to stay home and self-monitor for symptoms, and follow CDC guidance if symptoms develop.
- Close off areas used by the sick person and do not use the area until after cleaning and disinfection. Ensure safe and correct application of disinfectants and keep disinfectant products away from children.
- Advise staff and congregants with symptoms of COVID-19 or who have tested positive for COVID-19 not to return to the facility until they have met CDC's criteria to discontinue home isolation.

Maintain healthy operations

- Implement flexible sick leave and related flexible policies and practices for staff (e.g., allow work from home, if feasible), and provide requested reasonable accommodation absent undue hardship to individuals with disabilities under the Americans with Disabilities Act (ADA) or other applicable laws and in accordance with religious practices.
- Monitor absenteeism and create a roster of trained back-up staff.
- Designate a staff person to be responsible for responding to COVID-19 concerns. Staff, clergy, volunteers, and congregants should know who this person is and how to contact them if they become sick or are around others diagnosed with COVID-19. This person should also be aware of state or local regulatory agency policies related to group gatherings.
- As volunteers often perform important duties (e.g., greeters, ushers, childcare), consider similar monitoring, planning, and training for them. Consider that volunteer and staffing may need to increase to implement cleaning and safety protocols and to accommodate additional services with reduced attendance.
- Communicate clearly with staff and congregants about actions being taken to protect their health.

Signs and Messages

- Post signs in highly visible locations (e.g., entrances, restrooms, gathering halls/community rooms/gyms) that promote everyday protective measures and describe how to stop the spread of germs (such as by properly washing hands and properly wearing a mask).
- Include messages (for example, videos) about behaviors that prevent the spread of COVID-19 when communicating with staff and congregants (such as in emails and on community websites and social media accounts).
- Find freely available CDC print and digital resources on CDC's communications resources main page.

Closing

- Check state and local health department notices daily about transmission in the community and adjust operations.
- In the event a person diagnosed with COVID-19 is determined to have been in the building and poses a risk to the community, it is strongly suggested to dismiss attendees, then properly clean and disinfect the area and the building where the individual was present before resuming activities.

Last Updated May 23, 2020

Maine

Maine 'superspreader' wedding linked to 170 Covid cases and seven deaths

More than 100 people gathered for August event in Millinocket

'It is spreading in the community with remarkable force'

Associated Press

Thu 17 Sep 2020 06.30 EDT

A rural church wedding and reception on a beautiful day in the shadow of Mount Katahdin was no doubt a happy day. But it has spread misery ever since.

The outbreak changed the calculus of state health officials, who urged renewed vigilance in a state that had largely controlled the virus previously, Shah said.

“It is spreading in the community in and around York county with remarkable force,” he said.

The epicenter was an unlikely place. Millinocket is a rural community that serves as gateway to North Woods made famous by Henry David Thoreau. Before the wedding, the community had no cases of the coronavirus.

It unfolded on a sunny day in August with a wedding at the Tri Town Baptist church in East Millinocket and a reception at the Big Moose Inn in Millinocket, population 4,400.

There were 65 guests at the Big Moose Inn – violating the state’s 50-person limit for indoor events – and many attendees didn’t wear masks or socially distance from each other, state officials said.

Other guests not affiliated with the wedding brought the number to more than 100.

The officiant at the wedding, the Rev Todd Bell of Calvary Baptist church in Sanford, joined several members of his congregation.

About 10 of his congregants have also tested positive for the virus. He declined to speak to the Associated Press.

Bell continued to hold services in Sanford and bristled over attacks aimed at him on social media.

In one sermon, he urged people to put their trust in God over government and questioned the wisdom of masks, likening their effectiveness to a chain-link fence trying to keep out mosquitoes.

On a video, which is no longer public on YouTube, he said he’s been “reviled” because of the wedding.

Many people have questioned the wisdom of having such a gathering in the midst of a pandemic.

“Tragic is the word for things that we don’t have any control over. In this case, we don’t have control over the virus but this pastor absolutely had the choice whether to perform the wedding,” said the Rev Erika Hewitt, a Unitarian Universalist in Bath.

Already struggling, Maine’s summer wedding industry tightened rules, forcing people

Trump claims CDC director is 'confused' over 2021 vaccine timetable

Read more

That single event on 7 August is linked to coronavirus outbreaks in at least two other locations in Maine, with more than 170 people contracting the virus and seven deaths since.

Nirav Shah, director of the Maine Center for Disease Control, said the single event has the power to undo much of the state's progress during the pandemic. The virus can become "the uninvited guest at every single wedding, party or event in Maine", he warned.

The "superspreader" event started with wedding attendees in the Katahdin region and spread to the community at large and to a nursing home in Madison.

An attendee worked at the York county jail, 220 miles away, where there are more than 70 cases. The state is also investigating an outbreak at a church in Sanford, home of the wedding's officiant.

None of those who died actually attended the wedding and reception. The first of the deaths was reported in Millinocket, where no one has tested positive for several weeks, the town manager said on Wednesday.

Six other deaths were residents of Maplecrest rehabilitation and living center in Madison.

The ramifications were swift.

Across the state, brides and grooms scrambled as event venues reassessed safety rules during the pandemic.

The reception venue lost its business license, briefly, and hired a public relations firm. The pastor hired a law firm that specializes in religious liberty.

Already struggling, Maine's summer wedding industry tightened rules, forcing people to pare down guest lists, or cancel events altogether.

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In Belfast, Thomas Roberts nearly blew a gasket when the Boathouse notified his daughter the venue might cancel her wedding.

"We have people already paid for travel arrangements, airline arrangements, rooms, and Covid-19 testing before traveling. Don't mess with my daughter's wedding less than a month before it," he said on social media.

His daughter, Amber, said she had already reduced her guest list, and informed guests of Maine's quarantine and testing requirements. Her wedding is outdoors but she may have to drop more people from an indoor reception.

"I worry and stress out very easily," said the bride-to-be. "We're trying very hard to follow their guidelines so we can have a happy day."

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A server wearing a face mask takes orders from a table of customers in Houston, Texas, on May 22. | Mark Felix/AFP via Getty Images

How superspreading is fueling the pandemic — and how we can stop it

"Any one of us could unknowingly be a superspreader."

By Katherine Harmon Courage | Updated Oct 3, 2020, 8:00am EDT

We now know that, on average, most people with the novel **coronavirus** pass the virus to just one other person, or to no one else at all.

But some go on to infect many, many more, often before they even experience symptoms. Many of these transmission chains begin with "superspreading" events, where one person (usually in a crowded indoor space) passes the virus to dozens of others. Early **contact tracing** studies suggest these events have been a large driver of transmission around the world. By some estimates, 10 percent of people have been causing 80 percent of new infections.

To date, some of the largest superspreading events have happened aboard ships, including Navy carriers and cruise ships. But they are also happening in smaller settings, including at **a church in Arkansas**.

In early March, a 57-year-old pastor and his wife, who both felt fine, attended a series of church events over three days, and the pastor returned for an additional Bible study group a few days later. Soon after, they each started developing symptoms and eventually tested positive for the coronavirus. But it had already spread. At least 33 of the other 92 event attendees later tested positive for Covid-19, and three of them died. These cases then spawned more than two dozen other illnesses — and another death — in the community.

One **preliminary** Centers for Disease Control and Prevention report analyzed all of the 3,184 confirmed Covid-19 cases in Japan through the beginning of April. The researchers found that 61 percent of cases could be definitively traced to clusters of spread outside the household, such as at restaurants, bars, event venues, and workplaces. And this is likely an undercount due to limitations in **contact tracing**.

Superspreading events can lead to potentially thousands of cases in the community, as an August 25 **preprint** that hasn't yet been peer reviewed suggests. The authors sequenced the full viral genome in 772 Covid-19 cases in the Boston region, including 28 early cases that were linked to a **late-February conference** for the biotech company Biogen. By finding a specific genetic mutation in the conference infections, they could then trace the chain of transmission. This one variant was found in about one in three later cases in their Boston area study (and about 2.7 percent of all of the analyzed US cases), suggesting that the Biogen conference led to an estimated **20,000** Covid-19 cases in total.

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How large "superspreader" events turned into coronavirus hot spots

What causes these superspreading clusters, and why are they such a key driver of this pandemic? Is it something about the people themselves who start them? Or is it more about the settings where these events take place? Or a combination?

Thankfully, we are learning more about superspreading events, and this insight can help dramatically slow the spread of the coronavirus and save lives — all while potentially allowing more people to return to less risky activities. That is, if policymakers implement the guidance, and people follow it. "If you could reduce superspreading, you could have a

massive impact on the pandemic," Elizabeth McGraw, director of the Center for Infectious Disease Dynamics at Pennsylvania State University, told Vox in an email. Let's walk through it.

Why is the coronavirus so good at superspreading?

To understand what might kick off a superspreading event, let's review some basics about how this virus, SARS-CoV-2, spreads. Researchers have found that it often spreads through **microscopic droplets** created when an infected person coughs or sneezes — or even speaks — and another person breathes them in. These disease-containing droplets are a large part of the reasoning behind staying at least 6 feet away from people and wearing a mask in public.

But scientists are **finding** that the virus likely also spreads through even tinier, longer-lasting aerosols particles from breathing or speaking (or **flushing a toilet**). These are so small they can linger in the air after an infectious person has left — and may contain infectious virus particles for up to **three hours**. And they may be a key element to superspreading events: An infected person could seed a poorly ventilated indoor space with virus without even getting physically close to all the people they end up infecting.

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Why some states became coronavirus hot spots — and others haven't

Superspreading also appears to be more likely with SARS-CoV-2 because people typically have the highest level of the virus in their system (making them infectious) right **before they develop symptoms**. (This is very different from other severe coronaviruses like SARS and MERS, where people were most infectious **seven to 10 days** after they started feeling sick, when they were more likely to be in isolation or in medical care.) So thousands of people with active Covid-19 infections continue to go about their lives not knowing that they could be spreading the disease.

This has meant that, as some researchers **noted in a preprint**, "most transmissions are front-loaded" toward the beginning of the illness. As another team of researchers who analyzed cases and contacts in Taiwan **noted in *JAMA***, people actually had a much lower risk of spreading the virus after five days of symptoms. This might be in part because sick people are less likely to go out, whether because they don't want to spread their illness or because they simply don't feel up to it.

But it also has to do with a person's "viral load" — an amount that actually tends to go down as symptoms wear on. A May study of samples collected from patients, **published in *Clinical Infectious Disease***, suggests that people who had symptoms for more than eight days might not actually be very infectious.

"I THINK THE VIRUS'S BIGGEST WEAPON HAS BEEN THAT IT CAN BE SPREAD BY ASYMPTOMATIC OR PRESYMPTOMATIC PEOPLE"

All of this makes it so much more likely for people to be spreading the virus — sometimes to very large groups of people — unwittingly.

"I think the virus's biggest weapon has been that it can be spread by asymptomatic or presymptomatic people," McGraw says. "This, in combination with insufficient testing of people in the community, has meant that it can move from one host to the next while we are unaware."

This coronavirus's uneven spread is calculated by its "dispersion factor" (sometimes abbreviated as "k"): what proportion of cases cause the bulk of transmissions. An even dispersion rate would mean most people cause the same number of secondary infections.

We still don't have an entirely firm k factor for Covid-19, and a lot of the research is still in the prepublication phase and has not been peer-reviewed. But preliminary estimates, such as **one** co-authored by Adam Kucharski, an infectious disease dynamics expert at the London School of Hygiene and Tropical Medicine, suggest that about 10 percent of infected people cause about 80 percent of the virus's spread.

Another early, **non-peer-reviewed study** from Israel put the local k factor at between 1 and 10 percent of infected people causing 80 percent of new infections. And **a preliminary analysis** of superspreading events in Hong Kong put their estimates at around 20 percent of infections causing 80 percent of local transmission.

All of this shows how important superspreading events have been in the virus's spread. But it doesn't fully explain why they are happening — or how to stop them.

Are certain people more likely to be superspreaders?

Scientists are learning that a person's likelihood of kicking off a superspreading event probably depends a little bit on biology and a lot on behavior.

Some individuals seem to develop **higher amounts of the virus** in their system, upping their odds of transmitting it to others.

And given that the amount of virus in the body tends to **shift over the duration of infection** — rising until around the onset of symptoms, then declining — the chance that someone is a likely superspreader changes over time.

Another **preprint** posted on August 7 developed a model to better understand how these dynamics might be playing out for SARS-CoV-2. The research suggests that people carrying this virus are potentially infectious for about two and a half days — and rise to a "moderate probability of transmission per contact" for "less than half a day," the researchers write.

This means that it would likely take someone having contact with a large number of people during the window when they had fairly large amounts of the virus (more than 10 million RNA copies) to spark a superspreading event infecting more than 50 people (whereas someone with 100,000 viral RNA copies was unlikely to infect others).

This helps us understand how superspreading can happen by chance, on a population level. Finding out whether some people are predisposed to be superspreaders will take more time and research, McGraw says.

But what we have been learning is how individuals' behavior could increase the chance they spread the virus to many others — or not. "We do know that wearing masks, keeping up physical distancing, avoiding crowds, and isolating upon becoming sick or testing positive can prevent superspreading," she says.

The CDC report out of Japan found 22 people who likely started clusters of cases. (Half of them were 20 to 39 years old.) And for 16 people, the research team could figure out when transmission occurred, which is important because it showed that 41 percent of them didn't have any symptoms when they spread the virus. In fact, of the superspreaders, only one had a cough when they infected others.

And as the authors of the August 7 **preprint** found, about 62 percent of superspreading transmissions happened when the spreader was presymptomatic.

This points to an important nuance in thinking about how some individuals might be sickening a disproportionate number of others. "We should not think about

This is one of the reasons **experts worry** about large indoor gatherings— more so than outdoor ones — causing large spikes in case numbers.

With Friday's news that at least **12 people who work in the White House or have recently attended events there**, including President Donald Trump, have tested positive for the coronavirus, **there are questions** about whether the **maskless indoor receptions** on September 26 to celebrate Trump's nomination of Judge Amy Coney Barrett to the Supreme Court kicked off a superspreading event.

Dr. Angela Rasmussen
@angie_rasmussen

The Amy Coney Barrett Rose Garden announcement was a superspreader event, despite being outdoors.

Single risk reduction measures are not enough. Multiple measures are needed:

Masks AND distancing AND avoid crowds AND hygiene AND avoid prolonged contact.

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superspreaders as villains," McGraw says. "Any one of us could unknowingly be a superspreader" — especially given what we know about how much it spreads when people are feeling just fine.

But that means we can probably also avoid becoming a superspreader by doing things we already know can limit the spread of the virus: "Wear a mask. Wash your hands. Keep your distance, and respect the physical space of others," McGraw says.

As the pandemic has worn on and become increasingly politicized, however, many people in the US are now resisting continued precautions, leading to **mask rebellions**, large gatherings — and much greater chances of new superspreading events.

"I see an increasing number of people not wearing masks in public as restrictions ease," McGraw says. "I find it disappointing. I worry that our focus on personal freedoms in the US, rather than being more community-minded, is going to prolong the outbreak and lead to more deaths than necessary."

Why superspreading is more common at concerts than in libraries

Although we know that individuals' behavior plays a role in superspreading, what might be even more important for these events is where they happen.

Researchers have been tracking many superspreading events around the globe, and there seem to be recurring locations no matter what the country. In addition to those we have heard most about, like prisons, **food processing plants**, and elder care facilities, there have also been numerous large superspreading events at bars, churches, offices, gyms, and shopping centers.

These are also places, though, that are now reopening around the country and likely contributing to the **upward swing of cases** in many states. As Kucharski wrote in an email to Vox, "Identifying and reducing risky events and environments could make a substantial dent in transmission." Not reducing these events has the opposite effect on the number of cases.

For example, as South Korea started to reopen in early May, one infected person who attended five nightclubs caused at least **50 new infections**.

And **a preliminary study** of infection clusters in Hong Kong found that the largest one documented so far, which resulted in 106 Covid-19 cases, was linked back to exposures

from staff and musicians at a series of bars. Seventy-three of the people in this cluster caught the virus at the bars (including 39 who were customers), who then spread it to others in the community.

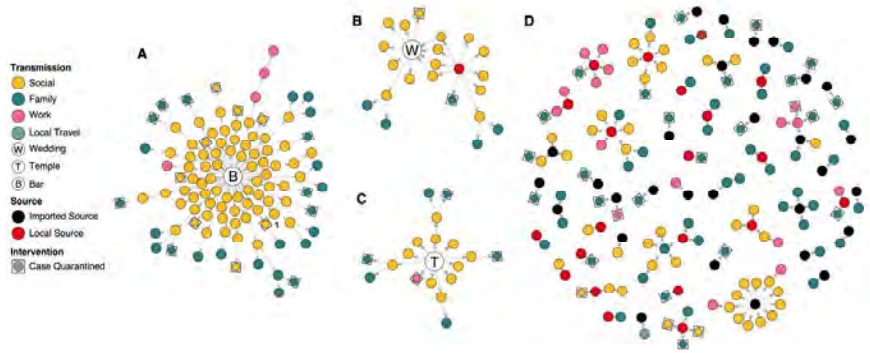

Figure A shows a large superspreading event that spiraled out from a cluster of bars in Hong Kong. | *Epidemiology*

A team of researchers at the London School of Hygiene and Tropical Medicine has been collecting data on these superspreading events in **a public database**. The largest ones — including two that resulted in more than 1,000 cases each — happened aboard ships. Hundreds of cases also have originated from single individuals in close contact with others in worker dormitories, food processing plants, prisons, and elder care facilities.

But next on the list are an outbreak tied to a single person at an indoor-outdoor shopping market in Peru who likely infected 163 other people; an indoor-outdoor religious service in India where one person likely sickened 130 others; and an indoor-outdoor wedding in New Zealand where a single case sparked 98 more.

Only one of the 22 cluster location types the team analyzed in **a preliminary study** was an outdoor setting (building sites in Singapore; four clusters were linked to these sites, causing a total of 95 infections acquired directly from the sites).

These findings line up with other **preliminary research** that calculated closed environments to be almost 20 times more likely to spur additional coronavirus infections than open-air ones.

There was concern that the **massive protests** across the US, which started in late May after the killing of George Floyd, would become superspreading events. So far the data

suggests that wasn't the case, with **no large surge** in cases in cities that had the largest demonstrations.

This lines up with the science. "Outdoor events like the protests are inherently less risky than indoor events, given greater airflow," McGraw says. "It is also easier to spread out and maintain physical distancing." And photographs of the protests have shown that a large number of people have been wearing masks. Still, no massive gathering is guaranteed to stay Covid-19-free. "There will still be increased risk of transmission given the large number of people present," she says.

It also appears that not all indoor venues and events are equally risky when it comes to starting a large cluster of new cases.

As we've learned from studying events, like the infamous March **church choir practice** in Skagit County, Washington, during which one person infected an estimated 52 of 61 people (two of whom died), loud talking and singing "can spread more virus than talking at a normal volume," McGraw says.

Indeed, the recent analysis out of Japan found that "many Covid-19 clusters were associated with heavy breathing in close proximity, such as singing at karaoke parties, cheering at clubs, having conversations in bars, and exercising in gymnasiums."

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How to weigh the risk of going out in the coronavirus pandemic, in one chart

Even looking more closely at cases from these locations can give us clues about what makes superspreading more likely. A **CDC report** from South Korea detailed 112 Covid-19 infections that came from aerobic dance classes (like Zumba) in one city. Interestingly, an instructor who infected dance class participants also taught yoga and Pilates classes, but none of those participants got ill.

"We hypothesize that the lower intensity of pilates and yoga did not cause the same transmission effects as those more intense fitness dance classes," the authors noted. "The moist, warm atmosphere in a sports facility coupled with turbulent air flow generated by intense physical exercise can cause more dense transmission of isolated droplets," thereby making the virus more likely to spread.

These hubs of contagion also are helping us learn what activities might be safer, **like seeing small groups of people, from a distance, outdoors**.

"There's increasing evidence that certain environments, like socially distanced picnics with a few other people, are far less risky than crowded, close-knit interactions, like large gatherings indoors," says Kucharski, who is also the author of ***The Rules of Contagion***.

What should we be doing to limit superspreading?

Superspreading can be both a curse and a potential blessing in a disease outbreak. It means that having everyone on full lockdown is not necessarily essential to keep the disease in check when it is not already circulating widely in a community — if (and that's an important "if") we can determine the highest risks for superspreading and prevent them. That's the blessing. The curse, Kucharski says, is "if risky situations are missed or undetected, it means transmission could persist."

Not only that, but there is also the danger that, as the authors of **one early report** note, "If a superspreader is infected, the disease may spread to other superspreaders." This seems entirely possible, especially given that people surrounding an original superspreader were probably already engaging in behavior (like attending a crowded public location) that would make them more likely to be a superspreader, too.

Superspreading events also can strain other systems in place, like contact tracing, to contain the virus, increasing the odds that further infections will continue to spiral in the community. Just as a sudden spike in cases can surpass the capacity of health care systems, a big jump can also surpass local capacity to track and notify contacts of the infected to isolate and get tested.

But now that we have data from recent superspreading events, we could theoretically prevent future ones. For example, the **preprint** modeling superspreading dynamics suggests that just reducing exposure opportunities, such as events with 20 or more possible people, could get the virus's spread under control.

The good news is that the science on this is growing. But it depends on government, businesses, and individuals to put these lessons into practice.

For example, in addition to physical distancing measures, limits on capacity, and requiring mask-wearing, governments and businesses could also take into account other details we

are learning about superspreading events, like loud environments that encourage more droplet-filled speech.

One thing that will help reduce these events is more contact tracing, isolation, and testing. If those 10 or 20 percent of people who would have sparked 80 percent of the new infections instead only passed the illness on to one or two other people, we could be in a much different place, and soon.

A first step is following the lead of infectious disease experts, who know well what potential superspreading situations to avoid. McGraw says, "I might dine outside, if the tables were spaced apart, and I felt like the customers and restaurant staff were taking precautions." Earlier this summer, she went camping with her family, but she chose campgrounds following CDC guidelines. "For other places, like **parks and beaches**, my advice is to be prepared to leave if they get crowded and you cannot safely distance," she says.

For his part, Kucharski cites the simple guidelines Japan has put out: avoid, when at all possible, the "3 Cs" — closed environments, crowded places, and close-contact settings.

Katherine Harmon Courage is a freelance science journalist and author of Cultured *and* Octopus! *Find her on Twitter at* ***@KHCourage****.*

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October 8, 2020

By ECF
The Honorable Gary L. Sharpe
Senior United States District Judge
James T. Foley U.S. Courthouse
445 Broadway, Room 112
Albany, NY 12207

Re: Soos, et al. v. Cuomo, et al., 1:20-CV-651 (GLS)(DJS)

Your Honor:

I am an Assistant Corporation Counsel in the office of James E. Johnson, Corporation Counsel of the City of New York, attorney for defendant de Blasio in the above-referenced matter. I write to inform the Court of a change in circumstances that affects the ability of individuals to gather in certain areas of New York City. As the Court may be aware, on October 6, 2020 Governor Cuomo (also a defendant in this matter) issued Executive Order 202.68 (the "Executive Order"), directing that the State Department of Health determine areas in the State that require enhanced public health restrictions due to severe increases in the number of COVID-19 cases and imposing mitigating measures in those areas. The Executive Order establishes three zones based upon the severity of growth in COVID-19 cases and sets forth different restrictions for each zone.

The Red Zones, which have experienced the sharpest increase in COVID-19 cases, has the greatest restrictions. Indeed, as of the drafting of this letter, the rate of positive tests in the red zone in New York City is approximately 8% whereas the rest of the City hovers at around 1%. To combat this resurgence, non-essential gatherings of any size are not permitted in the red zone. However, houses of worship are permitted to be open at up to 25% capacity or a maximum of 10 people, whichever is fewer. By contrast, all other non-essential businesses in the red zone must be closed.

In the Orange Zones, which, as of the drafting of this letter have approximately a 5% positivity rate, the Governor's Executive Order 202.68 prohibits non-essential gatherings greater than 10 people and allows up to 33% capacity in houses of worship or 25 people, whichever is fewer. While certain other non-essential businesses (for which there is a high risk for virus transmission) must be closed, other non-essential businesses may operate at the same

50% capacity as the rest of the City (other than the Red Zones) While we believe there is a public health rationale for restricting capacity at houses of worship in the orange zone to 33%, the City will hold houses of worship to the 50% capacity limit imposed on other non-essential businesses.

The Yellow Zones currently have approximately 3% positivity rate. Non-essential gatherings greater than 25 people are prohibited, but up to 50% of capacity is allowed in houses of worship. That is, houses of worship in the yellow zone are under the same restriction as houses of worship in the rest of New York City. The Executive Order was effective October 6, 2020 and directs that it shall be enforced no later than Friday, October 9, 2020. For reference, the Executive Order and current relevant maps can be accessed at:

https://www.governor.ny.gov/news/no-20268-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency;https://nycgov.maps.arcgis.com/apps/instant/lookup/index.html?appid=021940a41da04314827e2782d3d1986f

The State Department of Health has designated red, orange and yellow zones in multiple areas in the State, including several areas in Brooklyn and Queens. Given the dangerous increase in the positivity rate of COVID-19 in the zones designated by the Department of Health, the City of New York will immediately begin enforcing the Executive Order as described above as a necessary step to protect the public health and stop the further resurgence of COVID-19 in New York City.

Respectfully submitted,

/s/

Melanie V. Sadok
Assistant Corporation Counsel
admitted pro hac vice

cc: **By ECF**
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Attorney for Plaintiffs

Adrienne J. Kerwin
Assistant Attorney General
Attorney for Defendants Cuomo and James

Centers for Disease Control and Prevention

Coronavirus Disease 2019 (COVID-19)

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Frequently Asked Questions: Calculating Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) RT-PCR Laboratory Test Percent Positivity
FAQ: Calculating Percent Positivity

Updated Sept. 16, 2020 Print

FAQ

What is percent positivity? +

Percent positivity represents the percentage of all COVID-19 (SARS-CoV-2 RT-PCR) tests conducted that are positive. While the methods used to calculate percent positivity can differ, percent positivity provides important insights into the transmission of an infectious disease, such as COVID-19 (SARS-CoV-2), in a geographical area (e.g., national, regional, state, county). Percent positivity provides a strong indication of how widespread infection is in an area where testing is being conducted, but is dependent upon whether testing is keeping up with the level of disease transmission and the criteria used for testing (routine screening vs. diagnostic testing).

Why is calculating percent positivity important? +

A high percent positivity occurs when many of the test results among those being tested and reported in a community are positive. This can mean that

- There are a lot of infections in the community; or
- That only a subset of the community at greatest risk for SARS-CoV-2 infection is being tested; or
- There are reporting processes or delays that skew the results (e.g., prioritizing reporting of positive test results over negative results).

The percent positivity goes down when more people tested are negative for COVID-19. This happens when the number of infections goes down or when testing is expanded to include more people who are not infected. In general, percent positivity will go down as more persons are being screened in non-outbreak settings (e.g., routine screening of persons who are not infected by SARS-CoV-2 in schools, long-term care facilities, and workplaces) and the results are reported.

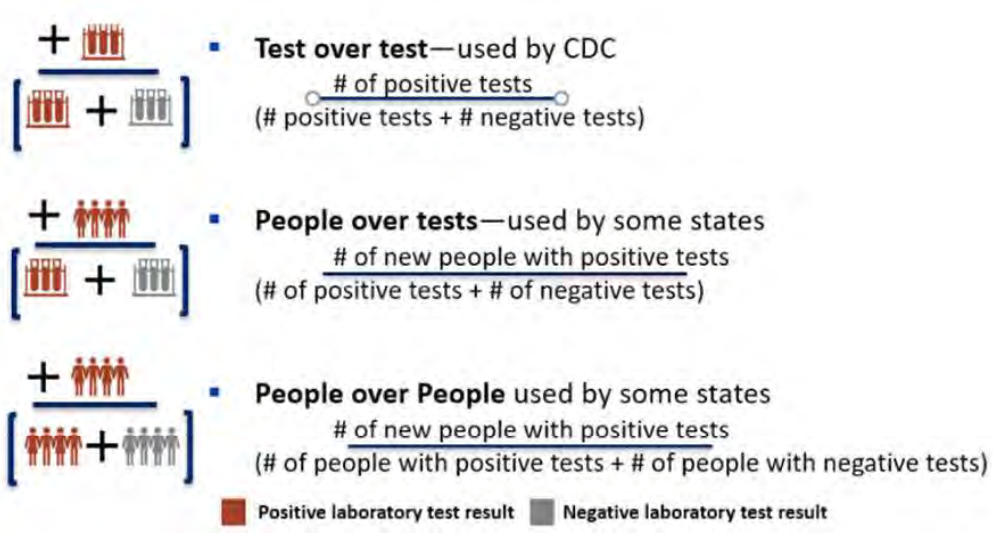
What methods are used to calculate percent positivity? +

- Differences in the numerators or denominators they use (e.g., tests/tests, people/tests, people/people). [See **figure** below].
- Differences in the timeframe in which data are included (i.e., a seven-day versus a 14-day rolling average), as well as what dates (e.g. specimen collection date, test date, result date) are used to assign tests to specific timeframes.

- Differences in the inclusion or exclusion of antigen test results. Antigen tests may be used for screening or diagnostic purposes. Antigen test results may not be consistently reported to public health officials by clinics or sites where routine screening is conducted (e.g., long-term care facilities, schools or workplaces).
- Differences in inclusion of screening tests results. With increased screening using both antigen and RT-PCR tests, the ability to confidently interpret the meaning of percent positivity results will be impacted by the unknown criteria for testing (routine screening vs. diagnostic testing of symptomatic persons).
- Differences in how test results are assigned to jurisdictions, including by the person's place of residence, the provider's clinic location, the location the test specimen was collected, or the location of the laboratory.
- Differences in whether "indeterminate" or "inconclusive" results are included in the denominator (even though these may represent a very small proportion of all results).

How is percent positivity calculated? +

There are three ways percent positivity can be calculated.



What is the value of calculating percent positivity? Does it matter which method is used? +

For surveillance purposes, the value of calculating percent positivity of laboratory tests for COVID-19 RT-PCR is to allow us to follow the magnitude and trend of the pandemic. Any of the three methods for calculation (tests/tests, people/tests, or people/people), when applied consistently and with clear communication, will allow public health officials to follow magnitude and trends effectively, and the trends will be useful for local public health decision making.

What does a high percent positivity mean? –

A high percent positivity means that SARS-CoV-2, the virus that causes COVID-19, transmission is elevated in the jurisdiction and community mitigation measures are warranted to reduce transmission. A high percent positivity means there is a high rate of SARS-CoV-2 infections due to extensive transmission of the virus in the geographic area. For details on steps you can take to slow the spread of the virus in your community, visit Implementation of Mitigation Strategies for Communities with Local COVID-19 Transmission.

How can a high percent positivity be reduced? –

To reduce the percent positivity, a community can work to reduce the coronavirus transmission. For a comprehensive list of CDC recommendations for prevention of COVID-19 transmission, visit CDC's summary of guidance.

A community can also do more testing. When there is a positive test, make sure that isolation of infected persons is done to limit further transmission. Other prevention measures also help such as wearing a mask, washing hands frequently, social distancing, avoiding large gatherings, and cleaning and disinfecting commonly used surfaces regularly.

If I live in a place with high percent positivity, what should members of the community do? +

Take steps to protect yourself and others from getting sick. Get tested if you have any symptoms or if you have been exposed to someone who has tested positive for COVID-19.

Where does the federal government report percent positivity? +

CDC currently provides data at the national level on RT-PCR laboratory test percent positivity on the CDC COVID Data Tracker.

The Center for Medicare and Medicaid Services publishes percent positivity by county to help guide the frequency of COVID-19 screening of long-term care facility residents and staff.

The White House Coronavirus Task Force reports percent positivity at the national, state and county levels in the Governor's Report, a weekly report that sent by the Vice President to each Governor.

Where can I find more information about calculating percent positivity? +

For additional information and resources, visit CDC's web page on Calculating Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) Laboratory Test Percent Positivity: CDC Methods and Considerations for Comparisons and Interpretation.

Last Updated Sept. 16, 2020

Centers for Disease Control and Prevention

Coronavirus Disease 2019 (COVID-19)

MENU >

Implementation of Mitigation Strategies for Communities with Local COVID-19 Transmission
Community Mitigation Framework

Updated May 27, 2020 Print

Background

This document describes the goals, guiding principles, and strategies for community mitigation to reduce or prevent local COVID-19 transmission. Community mitigation activities are actions that people and communities can take to slow the spread of a new virus with pandemic potential. COVID-19 is an infectious disease caused by a new coronavirus. Community mitigation actions are especially important before a vaccine or therapeutic drug becomes widely available.

Because COVID-19 is highly transmissible and can be spread by people who do not know they have the disease, risk of transmission within a community can be difficult to determine. Until broad-scale testing is widely implemented or we have a more comprehensive and precise measure of disease burden, states and communities should assume some community transmission or spread is occurring.

Individuals need to follow healthy hygiene practices, stay at home when sick, practice physical distancing to lower the risk of disease spread, and use a cloth face covering (with some exceptions) in community settings when physical distancing cannot be maintained. These universal precautions are appropriate regardless of the extent of mitigation needed.

Protecting the public's health is paramount. As communities work to reduce the spread of COVID-19, they are also addressing the economic, social, and secondary health consequences of the disease. State, local, tribal, and territorial officials are best positioned to determine the level of mitigation required. Mitigation strategies should be feasible, practical, and acceptable; they should be tailored to the needs of each community and implemented in a manner that minimizes both morbidity and mortality from COVID-19 and does not create or exacerbate any health disparities.

The information that follows provides a framework for states and localities as they consider which actions to take to mitigate community transmission of COVID-19 in the United States. Selection and implementation of these actions should be guided by the extent of disease transmission (Table 1). Demographic and other community characteristics, as well public health and healthcare system capacity, will also drive decisionmaking on mitigation (Table 2). Finally, a set of possible cross-cutting mitigation strategies for communities to consider is outlined (Table 3). More detailed and updated setting or sector specific mitigation strategies can be found here.

Goals

The goal of community mitigation in areas with local COVID-19 transmission is to slow its spread and to protect all individuals, especially those at increased risk for severe illness, while minimizing the negative impacts of these strategies. These strategies are used to minimize morbidity and mortality of COVID-19 in societal sectors such as schools, workplaces, and healthcare organizations.

Implementation is based on:

- Emphasizing individual responsibility for implementing recommended personal-level actions
- Empowering businesses, schools, and other settings to implement appropriate actions
- Prioritizing settings that provide critical infrastructure services

- Minimizing disruptions to daily life to the extent possible and ensuring access to health care and other essential services.

Guiding principles

- Community mitigation efforts aim to reduce the rate at which someone infected comes in contact with someone not infected, or reduce the probability of infection if there is contact. The more a person interacts with different people, and the longer and closer the interaction, the higher the risk of COVID-19 spread.
- Each community is unique. Appropriate mitigation strategies should be based on the best available data. Decision making will vary based on the level of community transmission and local circumstances. Refer to Table 1.
- The characteristics of the community and its population, health system and public health capacity, and the local capacity to implement strategies are important when determining community mitigation strategies. Refer to Table 2.
- As communities adjust mitigation strategies, they should ensure that the healthcare system capacity will not be exceeded. Precautions should be taken to protect health care professionals and other critical infrastructure workers. Communities need to assure healthcare systems have adequate staffing, a surplus of inpatient and ICU beds, and critical medical equipment and supplies such as PPE.
- As communities adjust mitigation strategies, they should ensure public health capacity will not be exceeded. Public health system capacity relies on detecting, testing, contact tracing, and isolating those who are or might be sick, or have been exposed to known or suspected COVID-19 cases; it is important to stop broader community transmission and prevent communities from having to implement or strengthen further community mitigation efforts.
- Attention should be given to people who are at higher risk for severe illness when determining and adjusting community mitigation strategies.
- Certain settings and vulnerable populations in a community are at particularly high risk for transmission. This includes but is not limited to congregate settings such as nursing homes and other long-term care facilities, correctional facilities, and the homeless population.
- Mitigation strategies can be scaled up or down, depending on the evolving local situation, and what is feasible, practical, and legal in a jurisdiction. Any signs of a cluster of new cases or a reemergence of broader community transmission should result in a re-evaluation of community mitigation strategies and a decision on whether and how mitigation might need to change.
- Cross-cutting community mitigation strategies can be organized into the following categories: promoting behaviors that prevent spread; maintaining healthy environments; maintaining healthy operations; and preparing for when someone gets sick. Presuming a community is not sheltering-in-place, cross-cutting strategies under each rubric are outlined below and should be implemented to the extent possible, and in accordance with the amount of ongoing community transmission. Refer to Table 3.
- Community mitigation strategies should be layered upon one another and used at the same time—with several layers of safeguards to reduce the spread of disease and lower the risk of another spike in cases and deaths. No one strategy is sufficient.
- There are range of implementation choices when setting or adjusting community mitigation plans. These choices offer different levels of protection from the risk of community transmission.
- Communities need to decide the level of risk that is acceptable and make informed choices about implementing mitigation plans accordingly.
- Individuals make choices about following the behavioral practices that are recommended. Compliance to community mitigation decisions will also impact the spread of COVID-19.
- CDC offers setting-specific strategies for a variety of sectors that include businesses, schools, institutes of higher education, parks and recreational facilities, and other places.
- Travel patterns within and between jurisdictions will impact efforts to reduce community transmission. Coordination across state and local jurisdictions is critical – especially between jurisdictions with different levels of community transmission.

Table 1. Level of mitigation needed by level of community transmission and community characteristics

Level of Community Transmission	Community characteristics and description	Level of mitigation

Transmission	description	
Substantial, uncontrolled transmission	Large scale, uncontrolled community transmission, including communal settings (e.g., schools, workplaces)	Shelter in place
Substantial, controlled transmission	Large scale, controlled community transmission, including communal settings (e.g., schools, workplaces)	Significant mitigation
Minimal to moderate community transmission	Sustained transmission with high likelihood or confirmed exposure within communal settings and potential for rapid increase in cases	Moderate mitigation
No to minimal community transmission	Evidence of isolated cases or limited community transmission, case investigations underway; no evidence of exposure in large communal setting	Low mitigation

CDC outlines a range of specific mitigation strategies to consider to slow the spread of COVID-19 by level of mitigation required. This includes protecting individuals at increased risk for severe illness, including older adults and persons of any age with underlying health conditions, and the healthcare and critical infrastructure workforces.

Table 2. Factors to Consider for Determining Mitigation Strategies

Epidemiology	• Level of community transmission: more extensive mitigation will be needed when there is greater community transmission • Number and type of outbreaks in specific settings or with vulnerable populations, including, but not limited to nursing homes and other long-term care facilities, correctional facilities, meat and poultry processing plants, and the homeless population • Severity of the disease • Impact of the level of community transmission and any outbreaks on delivery of healthcare or other critical infrastructure or services • Epidemiology in surrounding jurisdictions
Community Characteristics	• Size of community and population density • Level of community engagement and support • Size and characteristics of vulnerable populations • Access to healthcare • Transportation infrastructure (e.g., availability and use of mass transit) • Type of business or industry • Congregate settings (e.g., correctional facilities, homeless shelters) • Planned large events/gatherings, such as sporting events • Relationship of community to other communities (e.g., transportation hub, tourist destination, volume of commuting, and other attributes)
Healthcare Capacity*	• Healthcare workforce • Number of healthcare facilities (including ancillary healthcare facilities)

	• Testing activity • Intensive care capacity • Availability of personal protective equipment (PPE)
Public Health Capacity	• Public health workforce and availability of resources to implement strategies (e.g., resources to detect, test, track, and isolate cases) • Available support from other state/local government agencies and partner organizations

* Consult the Framework for Healthcare Systems Providing Non-COVID-19 Clinical Care During the COVID-19 Pandemic and Ten Ways Healthcare Systems Can Operate Effectively during the COVID-19 Pandemic.

Table 3. Overview of Possible Mitigation Strategies to Consider in Communities with Local COVID-19 Transmission Across Settings and Sectors*

Promote Behaviors that Prevent Spread	• Educate people to stay home when sick or when they have been in close contact with someone with COVID-19 • Teach and reinforce practicing hand hygiene and respiratory etiquette • Teach and reinforce the use of cloth face coverings to protect others (if appropriate) • Ensure adequate supplies are easily available (e.g., soap, hand sanitizer with at least 60% alcohol, paper towels) to support healthy hygiene behavior • Post signs or posters and promote messaging about behaviors that prevent spread
Maintain Healthy Environments	• Intensify cleaning and disinfection of frequently touched surfaces • Ensure ventilation systems operate properly and increase circulation of outdoor air • Ensure all water systems are safe to use • Modify layouts to promote social distance of at least 6 feet between people – especially for persons who do not live together • Install physical barriers and guides to support social distancing if appropriate • Close communal spaces, or stagger use and clean and disinfect between use • Limit sharing of objects, or clean and disinfect between use
Maintain Healthy Operations	• Protect people at higher risk for severe illness from COVID-19 • To cope with stress, encourage people to take breaks from the news, take care of their bodies, take time to unwind and connect with others, particularly when they have concerns • Maintain awareness of local or state regulations • Stagger or rotate scheduling • Create static groups or “cohorts” of individuals and avoid mixing between groups • Pursue virtual events. Maintain social distancing at any in-person events, and limit group size as much as possible • Limit non-essential visitors, volunteers, and activities involving external groups or organizations, especially with those who are not from the local area • Encourage telework and virtual meetings if possible • Consider options for non-essential travel in accordance with state and local regulations

- Designate a COVID-19 point of contact
- Implement flexible and non-punitive leave policies
- Monitor absenteeism and create a back-up staffing plan
- Train staff on all safety protocols
- Consider conducting daily health checks such as temperature screening or symptom checking
- Encourage those who share the facilities to also adhere to mitigation strategies
- Put in place communication systems for:
  - Individuals to self-report COVID-19 symptoms, a positive test for COVID-19, or exposure to someone with COVID-19
  - Notifying local health authorities of COVID-19 cases
  - Notifying individuals (employees, customers, students, etc.) of any COVID-19 exposures while maintaining confidentiality in accordance with privacy laws
- Notifying individuals (e.g, employees, customers, students) of any facility closures

Prepare for When Someone Gets Sick

- Prepare to isolate and safely transport those who are sick to their home or to a healthcare facility
- Encourage individuals who are sick to follow CDC guidance for caring for oneself and others who are sick
- Notify local health officials of any case of COVID-19 while maintaining confidentiality in accordance with the Americans with Disabilities Act (ADA) .
- Notify those who have had close contact with a person diagnosed with COVID-19 and advise them to stay home and self-monitor for symptoms, and follow CDC guidance if symptoms develop
- Advise individuals who are sick when it would be safe for them to return based on CDC's criteria to discontinue home isolation
- Close off areas used by someone who is sick. Wait >24 hours before cleaning and disinfecting. Ensure safe and correct use and storage of EPA-approved List N disinfectants , including storing products securely away from children.

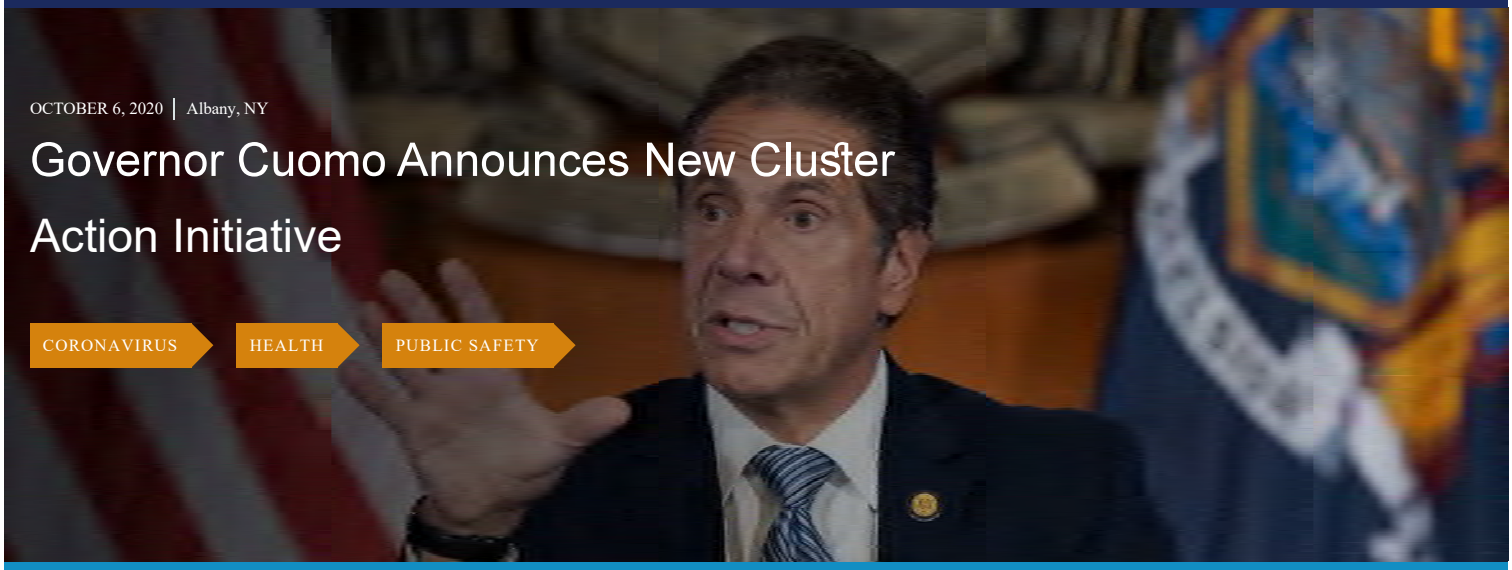
* Not all bullets are relevant to each setting or sector. The bullets are meant to be illustrative of community mitigation measures to consider. Refer to CDC webpage for more detailed information by setting or sector.

Last Updated May 27, 2020

October 8, 2020 | 2:30 pm
Information on Novel Coronavirus

Coronavirus is still active in New York. We have to be smart. Wear a mask, maintain six feet distance in public and download the official New York State exposure notification app, COVID Alert NY.

GET THE FACTS



OCTOBER 6, 2020 | Albany, NY

Governor Cuomo Announces New Cluster Action Initiative

CORONAVIRUS HEALTH PUBLIC SAFETY

SHARE

Initiative Developed in Consultation with Leading National Public Health Experts—Dr. Noam Ross of EcoHealth Alliance, Dr. Michael Osterholm of the University of Minnesota and Former CDC Director Dr. Tom Frieden

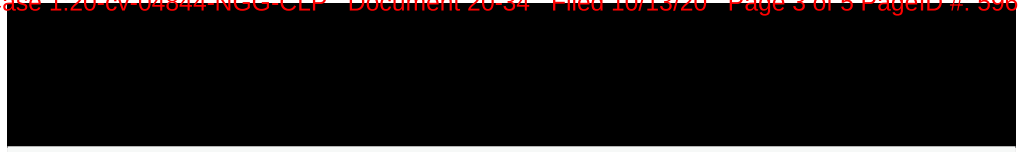
New Initiative Maps Clusters by Density of Cases to Address COVID Hot Spots in Brooklyn, Queens, and Broome, Orange and Rockland Counties

Fines for Sponsors of Mass Gatherings Increased to $15,000

New Rules and Restrictions in Effect for Minimum of 14 Days

Governor Andrew M. Cuomo today announced a new cluster action initiative to address COVID-19 hot spots that have cropped up in Brooklyn, Queens, and Broome, Orange and Rockland Counties. Working with the top public health experts, New York State developed a science-based approach to attack these clusters and stop any further spread of the virus, including new rules and restrictions directly targeted to areas with the highest concentration of COVID cases and the surrounding communities. The new rules will be in effect for a minimum of 14 days.

The plan was developed in consultation with national public health experts including Dr. Noam Ross of EcoHealth Alliance, Dr. Michael Osterholm of the University of Minnesota and former CDC Director Dr. Tom Frieden.



SHARE

AUDIO PHOTOS

"A cluster is just that - it's a cluster of cases, a high density of cases, and it seeps and grows from that cluster almost in concentric circles. Drop a pebble into the pond, the pebble goes in, then there's one ring, two rings, three rings, and the rings continue across the pond. When you see the cluster, you have to stop it at that point," **Governor Cuomo said.** "Our strategy is to crush the cluster and stop the spread, and we're announcing a special initiative to do just that. Step one, you take the most dramatic action within the cluster itself where you have the highest density of cases. Understanding that the people in that cluster interface with the surrounding communities, take additional action in the communities surrounding the cluster. Then as a precautionary measure, take action in the communities that are outlying that area."

The initiative is composed of three steps:

1. Take dramatic action within the cluster.
2. Take action in the area surrounding the cluster to stop the spread.
3. Take precautionary action in the outlying communities.

The initiative will currently apply to clusters in the following areas:

- Broome County (One Area, Yellow) - Click Here for Map
- Brooklyn (One Area, Red, Orange and Yellow) - Click Here for Map
- Orange County (One Area, Red and Yellow) - Click Here for Map

- Queens (Two Areas, Red, Orange and Yellow) - Click Here and Here for Maps
- Rockland County (One Area, Red and Yellow) - Click Here for Map

The initiative will divide clusters and the areas around them into three categories with successively higher restrictions within each one:

Red Zone — Cluster Itself

- Houses of Worship: 25 percent capacity, 10 people maximum
- Mass Gatherings: Prohibited
- Businesses: Only essential businesses open
- Dining: Takeout only
- Schools: Closed, remote only

Orange Zone — Warning Zone

- Houses of Worship: 33 percent capacity, 25 people maximum
- Mass Gatherings: 10 people maximum, indoor and outdoor
- Businesses: Closing high-risk non-essential businesses, such as gyms and personal care
- Dining: Outdoor dining only, 4 person maximum per table
- Schools: Closed, remote only

Yellow Zone — Precautionary Zone

- Houses of Worship: 50 percent capacity
- Mass Gatherings: 25 people maximum, indoor and outdoor
- Businesses: Open
- Dining: Indoor and outdoor dining, 4 person maximum per table
- Schools: Open with mandatory weekly testing of students and teachers/staff for in-person settings. The New York State Department of Health will establish a percentage of teachers and students/staff who need to be tested by Friday.

The enforcement of the zones will go into effect as soon as tomorrow and no later than Friday.

Governor Cuomo also announced that fines for the sponsors of mass gatherings in violation of

state public health rules will be increased to $15,000.

Contact the Governor's Press Office

Contact us by phone:

Albany: (518) 474 - 8418

New York City: (212) 681 - 4640

Contact us by email:

Press.Office@exec.ny.gov

State of New York

Executive Chamber

No. 202.68

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue;

NOW THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, or to provide any directive necessary to respond to the disaster, do hereby continue the suspensions and modifications of law, and any directives not superseded by a subsequent directive contained in Executive Orders 202.31, 202.41, 202.42, 202.43, 202.51, 202.52, 202.56, as contained in Executive Order 202.63, and Executive Orders 202.61 and 202.62 for another thirty days through November 5, 2020, and I hereby temporarily suspend or modify the following from the date of this Executive Order through November 5, 2020:

- Sections 12 and 206 of the Public Health Law, to the extent necessary to, notwithstanding any other provision of this Executive Order, provide that any individual who encourages, promotes or organizes a non-essential gathering as set forth in Department of Health regulation, shall be liable for a civil penalty not to exceed $15,000 per day; and

- Sections 12-a and 206(4) of the Public Health Law, to the extent necessary to authorize, at the direction of the Commissioner of Health or the Commissioner's representative, any local government official to assess, and the local government to retain, a civil penalty for violations of Executive Orders issued pursuant to Section 29-A of the Executive Law, or any regulations of the Department of Health, that impose requirements pertaining to maintaining social distance and wearing of face coverings, for the duration of this disaster emergency, and to conduct any hearing related to such penalties. Such penalties, if assessed on an individual basis, shall not exceed $1,000 per violation, except as otherwise provided herein.

IN ADDITION, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to issue any directive during a disaster emergency necessary to cope with the disaster, I do hereby issue the following directives through November 5, 2020:

- The Department of Health shall determine areas in the State that require enhanced public health restrictions based upon cluster-based cases of COVID-19 at a level that compromises the State's containment of the virus. Certain activities shall be restricted and any permitted activities, in all three zones below, shall be conducted in strict adherence to Department of Health guidance.

- Based upon the severity of the cluster activity, the Department of Health shall adopt in the most severe, or "red zones," the following mitigation measures:
  - Non-essential gatherings of any size shall be postponed or cancelled; all non-essential businesses, as determined by the Empire State Development Corporation based upon published guidance, shall reduce in-person workforce by 100%; houses of worship shall be subject to a capacity limit of 25% of maximum occupancy or 10 people, whichever is fewer; any restaurant or tavern shall cease serving patrons food or beverage on-premises and may be open for takeout or delivery only; and the local Department of Health shall direct closure of all schools for in-person instruction, except as otherwise provided in Executive Order.
- In moderate severity warning areas or "orange zones" the following mitigation measures:
  - Non-essential gatherings shall be limited to 10 people; certain non-essential businesses, for which there is a higher risk associated with the transmission of the COVID-19 virus, including gyms, fitness centers or classes, barbers, hair salons, spas, tattoo or piercing parlors, nail technicians and nail salons, cosmetologists, estheticians, the provision of laser hair removal and electrolysis, and all other personal care services shall reduce in-person workforce by 100%; houses of worship shall be subject to a maximum capacity limit of the lesser of 33% of maximum occupancy or 25 people, whichever is fewer; any restaurant or tavern shall cease serving patrons food or beverage inside on-premises but may provide outdoor service, and may be open for takeout or delivery, provided however, any one seated group or party shall not exceed 4 people; and the local Department of Health shall direct closure of all schools for in-person instruction, except as otherwise provided in Executive Order.
- In precautionary or "yellow zones," the following mitigation measures:
  - Non-essential gatherings shall be limited to no more than 25 people; houses of worship shall be subject to a capacity limit of 50% of its maximum occupancy and shall adhere to Department of Health guidance; any restaurant or tavern must limit any one seated group or party size to 4 people; and the Department of Health shall issue guidance by October 9, 2020 regarding mandatory testing of students and school personnel, and schools shall adhere to such guidance.

- The above directive shall be effective immediately, and at such time as notice is provided to such affected areas, may be enforced and shall be enforced no later than Friday, October 9, 2020, as determined by the county in which the red zones, orange zones, and yellow zones are located.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this sixth day of October in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

SPORTSMEN'S TAVERN, LLC,

Petitioner,

vs.

NEW YORK STATE LIQUOR AUTHORITY,

Respondent.

Index No.: 809297/2020

AFFIRMATION IN OPPOSITION TO THE PETITION

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

ELIZABETH M. DUFORT, M.D., FAAP, being duly sworn, deposes and says:

1) I am the Medical Director of the Division of Epidemiology, New York State Department of Health ("Department"). I have been the Medical Director since October 2014 and employed by the Department since October 2014. As such, I provide medical and clinical subject matter expertise and coordinate the Department's efforts to prevent the spread of communicable diseases, improve vaccination and prevent vaccine preventable diseases among New Yorkers, prevent and track healthcare associated infections, and respond to emerging infectious disease outbreaks.

2) I received my medical degree from the State University of New York at Buffalo, School of Medicine in 2002. I completed an internship and residency in pediatrics at New York University and Bellevue Hospital in 2005 and served as faculty with the AMPATH program in western Kenya, 2005-2006.

3) I also completed a fellowship in pediatric infectious diseases with the Alpert Medical School of Brown University/Hasbro Children's Hospital in Providence, Rhode Island. I subsequently served as a pediatric infectious disease clinician and assistant professor of pediatrics at Brown University and Albany Medical College. I specialize in pediatric infectious diseases and public health.

4) My responsibilities as they relate to COVID-19 include coordinating and engaging with the overall COVID-19 response team, research and evaluation efforts, directing the CDC-funded NYS COVID-19 Surveillance for Emerging Threats Network for mothers and babies ("SET-NET"), supporting the CDC-funded NYS Emerging Infections Program's ("EIP") COVID-Net surveillance for COVID-19 associated hospitalizations, serving as a subject matter expert for COVID-19 response efforts, and supporting schools reopening efforts.

5) I am familiar with the facts set forth herein based upon personal knowledge, discussions with Department staff, and Department records. I make this affidavit in support of Respondent's Answer and Return in opposition to the Petition.

COVID-19

6) On January 7, 2020, following an outbreak of pneumonia of unknown etiology in China's Wuhan Province, Chinese authorities identified a novel coronavirus—COVID-19. Its spread around the world has been well documented. A copy of the WHO Novel Coronavirus (2019-nCoV) Situation Report – 1 is attached hereto as Exhibit A.

7) COVID-19 is a highly infectious and potentially deadly respiratory disease caused by a novel coronavirus that spreads easily from person-to-person. A copy of the WHO Novel Coronavirus (2019-nCoV) Situation Report – 3 is attached hereto as Exhibit B.

8) Because there is no pre-existing immunity against this new virus, it has spread worldwide in an exceptionally short period of time, posing a "serious public health risk." Id.

9) On January 31, 2020, the World Health Organization ("WHO") declared a "public health emergency of international concern." A copy of the Statement from the International Health Regulations (2005) Emergency Committee is attached hereto as Exhibit C.

10) Less than two months later, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic. A copy of the WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020 is attached hereto as Exhibit D.

11) On March 13, 2020, the President of the United States declared a national emergency. A copy of the President's Proclamation is attached hereto as Exhibit E.

12) "Transmission of SARS-CoV-2 can occur through direct, indirect, or close contact with infected people through infected secretions such as saliva and respiratory secretions or their respiratory droplets, which are expelled when an infected person coughs, sneezes, talks or sings." A copy of the WHO Article: *Transmission of SARS-CoV-2: implications for infection prevention precautions* is attached hereto as Exhibit F. "WHO, together with the scientific community, has been actively discussing and evaluating whether SARS-CoV-2 may also spread through aerosols in the absence of aerosol generating procedures, particularly in indoor settings with poor ventilation." Id. "Current evidence suggests that SARS-CoV-2 may remain viable for hours to days on surfaces made from a variety of materials." A copy of the CDC Article: *Cleaning and*

Disinfection for Households is attached hereto as Exhibit G.

13) COVID-19 has an incubation period of up to fourteen days. See Exhibit F. Social distancing is one of the most effective means of limiting transmission of COVID-19. Id.

14) The CDC has thus issued guidance recommending that people comply with social distancing measures in order to prevent the spread of COVID-19. According to the CDC, "[l]imiting face-to-face contact with others is the best way to reduce the spread" of COVID-19. A copy of the CDC article *Social Distancing* is attached hereto as Exhibit H.

15) In order to limit exposure to COVID-19 and slow its spread, the CDC recommends keeping "at least six feet away from other people" and limiting "close contact with others outside your household in indoor and outdoor spaces" including avoiding groups and crowded places. Id. Social distancing "is one of the best tools we have to avoid being exposed to this virus and slowing its spread locally and across the country and world" because it "helps limit contact with infected people and contaminated surfaces." Id.

16) The rapid spread of COVID-19 in New York, in the United States, and worldwide, presented and continues to present a grave threat to New Yorkers and to New York's health care system. However, by taking strong action to ensure social distancing as well as other important measures, New York has mitigated that threat. To avoid a devastating resurgence of COVID-19, responsible parties, business owners, and the public must continue to adhere to the Executive Orders and guidance.

17) As of September 14, 2020, 922,252 people have died of COVID-19 worldwide[1]; 193,195 people have died of COVID-19 in the United States of COVID-19[2]; and 25,390 have died in the State of New York of COVID-19[3].

COVID-19 Surges in New York

18) New York recorded its first cases of COVID-19 on March 1, 2020, in New York City and on March 2, 2020, in Westchester County.

19) On March 7, 2020, Governor Cuomo declared a State of Emergency. A copy of Executive Order 202 is attached hereto as Exhibit I[4], available at https://www.governor.ny.gov/news/no-202-declaring-disaster-emergency-state-new-york. As of March 7, 2020, 60 people had tested positive for COVID-19 in the State of New York. See Fn. 3. Cases in the United States totaled 275. See Fn. 2. Cases worldwide totaled 179,111, with 7,426 deaths reported. See Fn. 1.

20) By March 20, 2020, the number of individuals testing positive for COVID-19 in New York approached 10,000, and deaths exceeded 150. See Fn. 3.

21) By April 20, 2020, over 267,000 individuals had tested positive for COVID-19, and over 13,000 people had died from COVID-19 in New York State. See Fn. 3. See also, https://www.syracuse.com/coronavirus/2020/06/where-is-coronavirus-in-ny-see-map-charts-of-

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[1] WHO Coronavirus Disease (COVID-19) Dashboard found at https://covid19.who.int/ (last viewed September 14, 2020).
[2] CDC Covid Tracker found at https://www.cdc.gov/covid-data-tracker/index.html#cases (last viewed September 14, 2020).
[3] NYSDOH COVID-19 Tracker found at https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-DailyTracker?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n#/views (last viewed September 14, 2020).
[4] All of Governor Cuomo's Executive Orders can be found at https://www.governor.ny.gov/executiveorders.

covid-19-cases-deaths-hospitalizations-sunday-june-14.html. (includes similar charts with trends over time).

22) These events placed significant strain on New York State's healthcare system. For example, as the virus spread, New York faced a shortage of hospital beds, ventilators, and personal protective equipment such as masks and gloves.

23) As a result, alternate care sites were set up, including at the Javits Center in New York City. The United States Navy sent the U.S.N.S. Comfort, a Mercy-class hospital ship, to New York to assist with medical care.

24) Funeral homes were also overwhelmed, resulting in the use of mass graves to bury the dead.

25) At the worst stage of the pandemic, New York State had more coronavirus cases than any single country in the world.

26) Among other measures aimed at flattening the curve, slowing the spread of COVID-19, and preventing the health care system from becoming overburdened, Governor Cuomo issued multiple Executive Orders restricting gatherings.

27) On March 16, 2020, gatherings in excess of 50 people were prohibited. On-premises service of food and beverages in all bars and restaurants were indefinitely suspended and gambling establishments, gyms, and movie theaters were indefinitely closed. A copy of Governor Cuomo's Executive Order 202.3 is attached hereto as Exhibit J. All non-essential state and local workers to stay home, "except for those personnel essential to the . . . response to the COVID-19 emergency." A copy of Governor Cuomo's Executive Order 202.4 is attached hereto as Exhibit K. All schools were closed. Id.

28) On March 18, 2020, all malls and places of public amusement closed. A copy of Governor Cuomo's Executive Order 202.5 is attached hereto as Exhibit L.

New York State on PAUSE

29) On March 20, 2020, the governor announced the New York State on PAUSE initiative.

30) The 10-point New York State on PAUSE plan is as follows:

- All non-essential businesses statewide closed, effective March 22, 2020, at 8pm;
- Non-essential gatherings of individuals of any size for any reason (e.g., parties, celebrations or other social events) are canceled or postponed at this time;
- Any concentration of individuals outside their home must be limited to workers providing essential services and social distancing should be practiced;
- When in public, individuals must practice social distancing of at least six feet from others;
- Businesses and entities that provide other essential services must implement rules that help facilitate social distancing of at least six feet;
- Individuals should limit outdoor recreational activities to non-contact and avoid activities where they come in close contact with other people;
- Individuals should limit use of public transportation to when absolutely necessary and should limit potential exposure by spacing out at least six feet from other riders;
- Sick individuals should not leave their home unless to receive medical care and only after a telehealth visit to determine if leaving the home is in the best interest of their health;
- Young people should also practice social distancing and avoid contact with vulnerable populations; and
- Use precautionary sanitizer practices such as using isopropyl alcohol wipes.

31) Among the more important measures the Governor adopted as part of the New York on PAUSE initiative were restrictions on non-essential gatherings.

32) On March 23, 2020, the Governor issued Executive Order 202.10, which banned "[n]on-essential gatherings of any size for any reason." A copy of Governor Cuomo's Executive Order 202.10 is attached hereto as Exhibit M.

33) That restriction remained in place until May 21, 2020, when the Governor issued Executive Order 202.32 to permit non-essential outdoor gatherings of up to ten individuals for religious services or Memorial Day service or commemoration, provided the participants follow the social distancing and cleaning and disinfection protocols established by the Department. A copy of Governor Cuomo's Executive Order 202.32 is attached hereto as Exhibit N.

34) The following day, May 22, 2020, the Governor issued Executive Order 202.33, which further modified the ban to permit non-essential outdoor gatherings of up to ten individuals for any lawful purpose or reason, provided the participants follow the social distancing and cleaning and disinfection protocols established by the Department. A copy of Governor Cuomo's Executive Order 202.33 is attached hereto as Exhibit O.

35) On June 15, 2020, the Governor issued Executive Order 202.42, which extended Executive Order 202.33 until July 15, 2020, and further modified the restriction to permit non-essential outdoor gatherings of up to twenty-five individuals for any purpose or reason, provided the gathering was in a region that had reached Phase Three of the re-opening plan and the participants follow the social distancing and cleaning and disinfection protocols established by the Department. A copy of Governor Cuomo's Executive Order 202.42 is attached hereto as

Exhibit P.

36) On June 15, 2020, the Governor issued Executive Order 202.45, which permits non-essential gatherings of up to 50 individuals for any purpose or reason, provided the gathering was in a region that had reached fourth phase of the re-opening plan, and the participants follow the social distancing and cleaning and disinfection protocols established by the Department. A copy of Governor Cuomo's Executive Order 202.45 is attached hereto as Exhibit Q.

APRIL, MAY, and JUNE 2020—New York Appears to Flatten the Curve

37) Before the New York State on PAUSE initiative, the daily increase in the number of positive COVID-19 tests had been rising quickly. On March 19, the number of positive tests increased nearly 70%, from, 1,769 to 2,950. For the remainder of March and early April, the number of positive tests increased at an average rate of approximately 20% per day. On April 9, 2020, alone, over 10,000 people tested positive for COVID-19. Since April 9, 2020, the number of positive tests per day has declined steadily. On May 28, 2020, over 1,551 people tested positive for COVID-19. On June 29, 2020, 46,428 people were tested and only 319 tested positive—a positivity rate below .7 %.[5]

New York Forward

38) When New York transitioned from New York State on PAUSE to New York Forward, four phases were created to guide non-essential businesses and offices, as well as the essential businesses that remained open, on how to reopen. See https://forward.ny.gov/ny-

[5] Found at https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-DailyTracker?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n (last viewed September 12, 2020).

forward.

39) Due to the success of the people of the State of New York at flattening the curve, all regions are in Phase Four. See https://forward.ny.gov/.

40) The Governor and the Department of Health are constantly monitoring transmission and infection rates. See COVID-19 Early Warning Monitoring System Dashboard[6].

41) Providing transmission and infection rates remain stable, restrictions can be relaxed allowing for larger gatherings.

42) By following the guidelines and requirements, such as social distancing and wearing masks, New York has successfully reduced the spread of the virus. As testing throughout the state has increased, the number of positive cases has decreased. See https://forward.ny.gov/percentage-positive-results-region-dashboard. On August 2, 2020, the downward trend of positive cases continued as 51,839 individuals were tested and 545 of those tested positive. Id.

43) The transmission rate, also known as the reproduction rate—which measures the number of individuals infected on average by an infected individual—was at 3.59 on February 24, 2020. The rate was as low as .67 on April 17, 2020. The rate remained consistent between .67 and .73 until May when the NY Forward transition began. Since reopening the rate has remained low but has begun inching up as the state progresses through the phases of reopening. On September 14, 2020, the transmission rate was 1.07%, slightly above the critical 1.0, which warrants close monitoring. See https://rt.live/.

[6] Found at https://forward.ny.gov/early-warning-monitoring-dashboard (last viewed September 14, 2020).

44) The goal of all restrictions in the Executive Orders and guidance is to reduce the opportunity for the virus to spread.

The Pandemic Continues to Present a Grave Threat to the Health and Safety of the People of the State of New York

45) Despite the gains that New York has made, the pandemic is not over. On July 29, 2020, WHO reported 16,558,289 individuals confirmed positive for COVID-19, and 656,093 confirmed COVID 19 deaths worldwide. See Fn. 1. On July 29, 2020, the CDC reported that 4,339,997 individuals in the United States had tested positive for COVID-19, and 148,866 had died of COVID-19. See Fn. 2.

46) Indeed, during the week of July 18 through July 24, the United States reported the highest seven-day average of new COVID-19 cases with the highest number of new cases reported in a single day on July 24, 2020 – 74,818. Id.

47) On September 5, 2020, WHO reported a total 27,738,179 individuals confirmed positive for COVID-19, and 899,916 confirmed COVID-19 deaths worldwide. See Fn. 1.

48) A second wave of the COVID-19 pandemic is currently sweeping United States. On September 14, 2020, the CDC reported that 6,467,481 individuals in the United States had tested positive for COVID-19, and 193,195 had died of COVID-19. See Fn. 2.

49) As of September 12, 2020, 34 states and one territory had a positivity rate of over 10%, or higher than 10 per 100,000 residents, over a seven-day rolling average, including Alabama, Alaska, Arkansas, California, Delaware, Florida, Georgia, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Missouri, Mississippi, Montana, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina,

South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wisconsin. See COVID-19 Travel Advisory, available at https://coronavirus.health.ny.gov/covid-19-travel-advisory.

50) In an effort to sustain the gains attributable to the PAUSE initiative, the Governor, on June 24, issued Executive Order 205, "Quarantine Restrictions on Travelers Arriving in New York." A copy of Governor Cuomo's Executive Order 205 is attached hereto as Exhibit R. The Order requires all travelers entering New York from a state with a positive test rate higher than 10 per 100,000 residents, or higher than a 10% test positivity rate, over a seven-day rolling average, to quarantine for a period of 14 days consistent with Department of Health regulations for quarantine. See also https://coronavirus.health.ny.gov/covid-19-travel-advisory.

51) Executive Order 205 gives discretion to the Commissioner of the Department of Health to issue additional protocols for essential workers, or for other extraordinary circumstances, when a quarantine is not possible, provided such measures continue to safeguard the public health. See Exhibit R.

52) On June 24, 2020, the Office of the Commissioner for the New York State Department issued the "Interim Guidance for Quarantine Restrictions on Travelers Arriving in New York State Following Out of State Travel." See NYS Interim Guidance for Quarantine Restrictions on Travelers Arriving in New York State Following Out of State Travel, available at https://coronavirus.health.ny.gov/covid-19-travel-advisory.

53) All individuals traveling to New York from any of the restricted states must complete the form upon entering New York. Travelers coming to New York from designated states through means of transport, including trains and cars, must fill out the form online. Id. This includes individuals traveling to New York State to attend ticketed events and

performances.

Risks for Non-essential Business and Indoor Gatherings

54) Restrictions on the operation of non-essential businesses and indoor gatherings are necessary to ensure sufficient space for proper distancing, thereby reducing potential transmission rates.

55) EO 202.6 listed what businesses and services in New York State were deemed "essential" and directed Empire State Development ("ESD") to issue guidance to further clarify which businesses would be considered "essential" or "non-essential." A copy of Governor Cuomo's Executive Order 202.6 is attached hereto as Exhibit S. On March 23, 2020, the Governor barred all non-essential gatherings of any size. See Exhibit M. All of these measures were aimed at eliminating situations in which people were likely to congregate and mingle in a way that could increase the spread of the COVID-19 virus.

56) Such situations included places of public amusement and restaurants/bars. On March 18, 2020, the Governor directed the closure of "all places of public amusement, whether indoors or outdoors, including but not limited to, locations with amusement rides, carnivals, amusement parks, water parks, aquariums, zoos, arcades, fairs, children's play centers, funplexes, theme parks, bowling alleys, family and children's attractions," but the directive did not apply "to public parks and open recreation areas." See Exhibit L.

57) Venues at which the public would watch any type of entertainment, sporting, or other event -- including musical performances -- were thus closed under EO 202.5. That restriction, implemented to address the risks associated with the non-essential congregating and mingling of people, especially indoors, remains in effect.

58) The ESD guidance issued for EO 202.6 listed the following business specifically as non-essential and unable to request designation as essential:

- Any large gathering or event venues, including but not limited to establishments that host concerts, conferences, or other in-person performances or presentations in front of an in-person audience;
- Any facility authorized to conduct video lottery gaming or casino gaming;
- Any gym, fitness centers, or exercise classes, except the remote or streaming service noted above;
- Any movie theater, except drive-ins;
- Any indoor common portions of retail shopping malls with 100,000 or more square feet of retail space available for lease; and
- All places of public amusement, whether indoors or outdoors, including but not limited to, locations with amusement rides, carnivals, amusement parks, water parks, arcades, fairs, children's play centers, funplexes, theme parks, bowling alleys, family and children's attractions.

A copy of the Empire State Development Guidance on Executive Order 202.6 *Guidance For Determining Whether A Business Enterprise Is Subject To A Workforce Reduction Under Recent Executive Orders* is attached hereto as Exhibit T.

59) These non-essential businesses were directed to monitor the NY Forward website for any reopening developments. Id.

60) EO 202.8 requires that all non-essential businesses reduce their in-person workforce by one hundred percent. A copy of Governor Cuomo's Executive Order 202.8 is attached hereto as Exhibit U. As music venues are non-essential businesses, under this EO music venues must close (there can be no staff on-site). These requirements of EO 202.8 are mirrored in Department's emergency regulations at 10 NYCRR § 66-3.4.

61) EO 202.45 permitted low risk indoor and outdoor entertainment to reopen, provided that such businesses follow Department guidance available. See Exhibit Q. The types of indoor activities contemplated by this guidance are museums, historical sites, aquariums, and other similar types, which all have in common that patrons/attendees move through the space and are not stagnant for an extended period of time. Both sets of guidance expressly state that concerts or similar types of performances should remain closed. A copy of the Department's Master Guidance for Low Risk Indoor and Outdoor Activities is attached hereto as Exhibit V. As such, EO 202.8's rule on reducing a non-essential businesses in-person workforce by 100% is still in effect for this type of business.

62) On July 6, 2020, Executive Order 202.48 extended the closure order for video lottery gaming or casino gaming, gyms, fitness center or classes, indoor common portions of retail shopping malls, and all places of public amusement, whether indoors or outdoors. A copy of Governor Cuomo's Executive Order 202.48 is attached hereto as Exhibit W.

63) In Phase Four, malls, professional sports with no fans, and low risk arts and entertainment were allowed to reopen and the Department provided summary guidance for each. A copy of Governor Cuomo's Executive Order 202.50 is attached hereto as Exhibit X.

64) All forms of indoor entertainment involving performances that are the primary attraction for customers (such as the ones Petitioner seeks to advertise), and which usually involve large gatherings or crowds, with common arrival, seating, viewing, and departure times continue to be restricted statewide.

65) The sole exception to this rule is for outdoor drive-in concerts, which have been allowed by ESD, provided that all attendees remain in their vehicles except to use restroom facilities.

66) There is a narrowly tailored exception for incidental background music in restaurants because different groups of people do not tend to coordinate their arrival at, and departure from, a dining experience at the same time, which avoids unnecessary congregation, and because such music serves as a background accompaniment to a meal, as opposed to an event in and of itself, which would be an attraction that is distinct from the dining experience. A copy of the New York State Liquor Authority Guidance for Phase 3/4 is attached hereto as Exhibit Y.

67) Ordinary restaurant service is not an appropriate comparator for a venue that relies on musical performances to attract customers.

68) These risks of congregating and mingling are not associated with incidental live music performances in restaurants, as permitted under current State-issued guidance.

69) In the case of ordinary restaurant service, the customers arrive and leave at different times. In contrast, musical performances typically are scheduled to take place at a particular time, which means the guests all arrive and leave together at roughly the same time, a fact that increases the chances of further mingling and transmission of the virus.

70) Musical performances and other similar events generally last for a much longer period of time than ordinary restaurant dining. This is especially so as people arrive early to get good seats and may linger after the performance is finished. By contrast, in ordinary restaurant dining, customers can be expected to finish a meal within an hour or two. A lengthy period of

time occupying the same space is an important factor in increased risk of transmitting the COVID-19 virus.

Large and Super-Spreader Gatherings

71) Gatherings, both indoor and outdoor, pose a significant risk of becoming super-spreader events. For example, "[a]s scientists have learned more about COVID-19, it has become clear that so-called superspreader incidents—in which one person infects a disproportionate number of other individuals—have played an oversized role in the transmission of the virus that causes the disease." A copy of the Scientific American Article *How Superspreading Events Drive Most COVID-19 Spread* is attached hereto as Exhibit Z.

72) "The more individuals you pile into one place, the greater the opportunity for the coronavirus to infect many people at once…. If you max out at five people, it will be very hard to have a superspreading event…. But as a group's size increases, so does the risk of transmitting the virus to a wider cluster. A large group size also increases the chance that someone present will be infectious." Id.

73) It is critically important to control the size of gatherings, both indoor and outdoor, since "as a group's size increases, so does the risk of transmitting the virus to a wider cluster. A large group size also increases the chance that someone present will be infectious." Id.

74) A research team "found that superspreading events tended to happen in indoor spaces, with people in close proximity. Social occasions led to more clusters than exposure in the workplace or home – mass transmissions occurred at weddings, temples, bars and karaoke parties, for instance. The risk seems to be higher if people are raising their voices in some way, such as singing or shouting." A copy of the New Scientist Article *Finding coronavirus*

superspreaders may be key to halting a second wave is attached hereto as Exhibit AA.

75) As CDC stated in guidance released on Friday June 12, 2020: The *more people* an individual interacts with at a gathering and the longer that interaction lasts, the higher the potential risk of becoming infected with COVID-19 and COVID-19 spreading. A copy of the CDC Article *Considerations for Events and Gatherings* is attached hereto as Exhibit BB.

76) Gatherings provide an ideal platform for the efficient transmission of COVID-19 to multiple people at once. Those individuals who contract COVID-19 at a gathering may themselves become super-spreaders if they attend further gatherings while they are asymptomatic. A copy of the NIH Article *COVID-19 Super spreaders definitional quandaries* is attached hereto as Exhibit CC.

77) A super-spreader, usually identified in retrospect, has a greater than average propensity to infect a larger number of people and it is thought that "10% of the [COVID-19] cases may be responsible for 80% of the transmission". Id.

78) "[A]ny large gathering or movement of groups or individuals can constitute super-spreading." Id.

79) The idea of "super-spreaders" or super-spreading events is not new to COVID-19. "[S]uper-spreading was thought to be a driver of MERS, SARS and, to a lesser extent, Ebola." Id.

80) Different activities have different requirements. The Department has provided guidance for large social gatherings, religious services, and food service/restaurants. There are no guidelines for concert halls or music venues because musical performances are not permitted.

81) Large social gatherings were only permitted if 10 or fewer people were in attendance during Phase One, 25 or fewer people attending during Phases Two and Three, and now if 50 or fewer people attend a social gathering during Phase Four. See https://coronavirus.health.ny.gov/travel-large-gatherings-and-quarantines. During a large social gathering, "[i]ndividuals must wear face coverings when they are in a public and are: within six feet of distance from other individuals; or in a situation or setting where they are unable to maintain six feet of distance from other individuals…." Id.

82) The guidance for food services is very detailed. There can be no more than 50% of maximum occupancy, excluding employees. Copy of the Department's Food Service Summary Guidelines is attached hereto as Exhibit DD.

83) "All indoor and outdoor tables with seating for customers must be separated by a minimum of 6 ft. in all directions. Wherever distancing is not feasible between tables, physical barriers must be enacted between such tables." Id.

84) The operator of the food service site, as the "responsible party," must "[c]learly signal 6 ft. spacing in any lines for customers waiting to order, pick-up food, be seated, or use the restroom, as well as in any pick-up or payment location.

85) It is important to consider the intention behind the guidance and the activities that take place during normal business operations – here, musical performances and food service. For example, when going to a restaurant for a meal, the expectation during normal business operations is that small parties (a maximum of 10 individuals per table) are there to eat their meal and leave, not mix and mingle with other patrons at the restaurant for hours.

86) Based on the activities that take place during each event, it is important to follow the proper guidelines for that event.

87) Currently there are no guidelines for the ticketed indoor performances or concerts that Petitioner seeks to host because there are not permitted.

Responsible Parties

88) For industries where people may gather, guidelines are directed at a responsible party – the individual who will ensure that the guidelines and EOs are being adhered to at the gatherings. See https://forward.ny.gov/statewide-guidelines. It is the responsible party for any gathering who must ensure that masks are worn, soap and water and/or hand sanitizer are available, proper distances are maintained, and any necessary markings are made on the floor or ground to show proper distancing.

89) It is important for responsible parties to follow State and local guidance to prevent transmission of COVID-19.

WHEREFORE, it is respectfully requested that the Court deny the relief sought in the Petition.

ELIZABETH M. DUFORT, M.D., FAAP

Sworn to before me this
14th day of September, 2020

NOTARY PUBLIC

SUSAN G. CARTIER
Notary Public, State of New York
No. 02CA6129083
Qualified in Albany County
Commission Expires June 20, 20 21

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JENNA M. DIMARTILE, JUSTIN G. CRAWFORD, PAMELLA GIGLIA, JOE DUROLEK, and DAVID SHAMENDA,

Plaintiffs,

-against-

ANDREW M. CUOMO, LETITIA JAMES, MARK POLONCARZ, EMPIRE STATE DEVELOPMENT CORPORATION, and ERIE COUNTY DEPARTMENT OF HEALTH,

Defendants.

DECLARATION

Civil No. 20-cv-859 (GTS)(CFH)

Howard A. Zucker, M.D., J.D., on the date noted below and pursuant to § 1746 of title 28 of the United States Code, declares the following to be true and correct under penalty of perjury under the laws of the United States of America:

Background and Qualifications

1. I am the Commissioner of the New York State Department of Health ("Department"). I make this declaration in my capacity as the Commissioner after consultation with Department program staff directing the initiatives detailed below. I respectfully submit this declaration in order to place before the Court certain testimony and documents relevant to the relief requested. I am familiar with the matters set forth herein, either from professional knowledge, conversations with Department staff, or on the basis of documents that have been

provided to and reviewed by me. I have been asked to assist New York State in its response to the COVID-19 public health emergency. I have attended meetings of the Governor's COVID-19 Response and Recovery Task Force (the "COVID-19 Task Force").

2. I have extensive knowledge of pediatric medicine and care and am aware of many family health issues. I am board-certified in six specialties/subspecialties and trained in pediatrics at Johns Hopkins Hospital, anesthesiology at the Hospital of the University of Pennsylvania, pediatric critical care medicine/pediatric anesthesiology at The Children's Hospital of Philadelphia, and pediatric cardiology at Children's Hospital Boston/Harvard Medical School. I was a professor of clinical anesthesiology at Albert Einstein College of Medicine of Yeshiva University and pediatric cardiac anesthesiologist at Montefiore Medical Center in the Bronx. I also served as associate professor of clinical pediatrics and anesthesiology at Columbia University College of Physicians & Surgeons and pediatric director of the ICU at New York Presbyterian Hospital. I am a former Columbia University Pediatrics Teacher of the Year.

3. As Commissioner of the Department, I must "take cognizance of the interests of health and life of the people of the state, and of all matters pertaining thereto and exercise the functions, powers and duties of the department prescribed by law." Public Health Law ("PHL") §206(1)(a).

4. I preside over the State's Office of Public Health, which includes epidemiology, the Medicaid program, the New York State Public Health and Health Planning Council, and the Wadsworth Center, New York's premier public health lab, as well as the entire health care workforce, and health care facilities.

5. In the last five months, I have been personally involved in the development and implementation of what is known as the "New York State on PAUSE" initiative—restrictions implemented through a series of executive orders and associated guidance designed to stop the transmission of the novel coronavirus (COVID-19)—and I am also familiar with the detailed plan that the State adopted to allow the safe reopening of each New York industry, including the food and beverages services industry.

6. I submit this declaration in support of the application by Defendants Governor Andrew M. Cuomo, Attorney General Letitia James and Empire State Development Corporation ("ESD") (collectively "State defendants"), for a stay pending appeal of the court's August 7, 2020 order granting two sets of plaintiffs a preliminary injunction enjoining the enforcement of the State's 50-person gathering limit at their respective wedding celebrations. (ECF # 20.) The first of the two weddings in the underlying complaint took place within hours of the Court's Order. The second of those weddings is scheduled to place on Saturday, August 22, with approximately 175 guests in attendance at an indoor facility at the Arrowhead Golf Club in Akron, Erie County, New York. (ECF # 1, ¶¶ 80-81.)

7. The injunction rests on an assumption that is contradicted by information that has guided the formulation of the executive order at issue here. The Court assumed that a wedding celebration has a "high degree of similarity" to an ordinary dining situation in a restaurant serving a comparable number of people. (ECF # 20, p. 22.) In fact, there are many important differences between such a celebration and ordinary restaurant dining, and those differences are highly significant from a public health perspective. At a restaurant, parties come and go at different times, they dine separately from one another, and they spend, perhaps, an hour or two at

a meal. At a wedding or other celebratory event, guests arrive and leave at roughly the same time, they do so for the very purpose of celebrating together, making mingling among guests inevitable, and they usually spend far more time in the event space than patrons typically spend dining in a restaurant. As more fully set forth below, these differences greatly increase the probability of transmission of the COVID-19 virus. Therefore, the number of people permitted in a restaurant for ordinary restaurant dining cannot be used for a social gathering at the same facility, such as a wedding or other similar event. Because such an event carries a greatly increased risk of transmission of disease, the number of attendees must be more limited than the number permitted for ordinary restaurant dining, in order to maintain comparable control of transmission risk.

8. To be clear, the restrictions applicable to this gathering, if reinstated by a stay of the injunction, would not prohibit Plaintiffs from proceeding with their wedding celebration on August 22. Nor would those restrictions prohibit Plaintiffs from having a religious ceremony. If reinstated by a stay of the injunction pending appeal, the restrictions would simply limit the size of the in-person gathering at the August 22 wedding to 50 people or fewer. That same restriction applies uniformly to all social gatherings across the State in Phase 4 of the reopening plan, regardless of the events' type or purpose. It applies to civil wedding ceremonies and denominational ceremonies equally. And it applies to large events of other kinds, including, for example, award banquets or retirement dinners.

9. For the reasons set forth below, a stay pending appeal of the Court's Preliminary Injunction is critically necessary because of the high risk that allowing 175 guests to attend in person the August 22 wedding at issue here could revive the spread of coronavirus in New York

State and defeat the careful, phased reopening now in progress. Public health demands compliance with the State's gathering limits at the upcoming August 22 event as well as at future still-unidentified events.

Potential Super-Spreader Events

10. A "super-spreader" event is one in which one person infects a disproportionate number of other individuals. As we have learned more about COVID-19, it has become clear that super-spreader incidents have played an oversized role in the transmission of the coronavirus. (*See* ECF #14-2, Ex. O.) A super-spreader event, usually identified in retrospect, has a greater than average propensity to infect a larger number of people, and it is thought that 10% of the COVID-19 cases may be responsible for 80% of the transmission. (ECF #14-2, Ex. R.)

11. One hallmark of a super-spreader event is its size. As CDC stated in June 12, 2020 guidance, the *more people* with whom an individual interacts at a gathering and the longer that interaction lasts, the higher the potential risk of becoming infected with COVID-19 and COVID-19 spreading. (ECF #14-2, Ex. Q.) As a group's size increases, so does the risk of transmitting the virus to a wider cluster. A large group size also increases the chance that someone present will already have the virus and be contagious, even if entirely asymptomatic. (ECF #14-2, Ex. O.) This is the reason that size limits have been imposed on gatherings of all kinds by the Executive Orders.

12. The number of people in a room is not, however, the sole determinant of the risk of transmission. In particular, the risk is much higher when the people in a room arrive and depart at the same time, are there for a communal purpose that encourages mingling, and spend

long hours there together. Weddings and other social gatherings thus entail a much higher risk of transmission at any given size than opening a restaurant to the same number of individuals in separate dining parties.

a. Weddings and other social gatherings generally involve much more direct interaction and mingling among the attendees than ordinary restaurant dining. At the wedding at issue here, the 175 guests will be "friends and family" (ECF #1 ¶85)—indeed, "close, intimate friends and family members" (ECF #4-1 at 9)—who can be expected to interact socially and physically over the several hours scheduled for the event. By contrast, in an ordinary restaurant situation, the patrons at each table do not usually know those at other tables and are not generally present for the purpose of interacting with those at other tables. During normal business operation, a restaurant expects that small parties (under the State's current rules, a maximum of 10 individuals per table are allowed) are there to eat their meals and leave, not mix and mingle with other patrons at the restaurant for hours.

b. Weddings and other similar events generally last for a much longer period of time than ordinary restaurant dining. This is especially so after the wedding ceremony itself, and during the celebration, which in this case is scheduled to take place at an indoor facility where guests will be served a meal over many hours.[1] By contrast, in ordinary restaurant dining, customers can be expected to finish a meal within an hour or two. A lengthy period of time

[1] For example, for the wedding celebration that proceeded on August 7, on authority of the court's preliminary injunction, the reception was scheduled to take place over a period of five and half hours, from 5:30 to 11:00 pm. *See* https://www.theknot.com/us/jenna-dimartile-and-justin-crawford-aug-2020.

occupying the same space is an important factor in increased risk of transmitting the COVID-19 virus.

c. While the gathering limit at issue is not specific to weddings, it is worth noting that large wedding celebrations—and in particular the large event planned for August 22—have several features that make them particularly potent spreaders of disease. This wedding is planned to take place indoors, and researchers have found that super-spreading events tended to happen in indoor spaces, with people in close proximity. And the risk seems to be higher if people are raising their voices in some way, such as singing or shouting, as frequently happens at celebrations, including wedding celebrations. (ECF #14-2, Ex. P.) In general, social gatherings have led to more clusters of disease than exposure in workplaces or homes—for example, mass transmissions have occurred at wedding celebrations, bars and karaoke parties.

d. In the case of ordinary restaurant service, the customers arrive and leave at different times. In contrast, wedding celebrations typically are scheduled to take place at a particular time, which means the guests all arrive and leave together at roughly the same time, a fact that increases the chances of further mingling and transmission of the virus.

13. Thus, the risks posed by large numbers of people at social gatherings are much greater than the risks posed by the same number of patrons dining indoors, separately in a restaurant. Social gatherings of large numbers of people, like the 175 people currently planned for the August 22 wedding, provide a vehicle for the efficient transmission of COVID-19 to multiple people at once. Those individuals who contract COVID-19 at such a gathering may themselves spread the virus further should they come in contact with others, which they could do while asymptomatic. (ECF #14-2 Ex. R.)

14. For example, the first super-spreader event in New York occurred when a 50-year-old man in New Rochelle started showing signs of illness on Saturday, February 22, 2020, but attended a bat mitzvah and a funeral at his synagogue, Young Israel of New Rochelle. As has been well publicized, his interaction with the other people at those gatherings created the State's first coronavirus cluster.[2]

15. A CDC report of a large gathering in Arkansas in March provides an additional example of how easily and rapidly coronavirus transmission can occur. Two asymptomatic individuals, a husband and wife, attended events at a church with a total of 92 attendees on March 6-8. They both developed symptoms a few days after the events. Of the 92 attendees, 35 (38%) had confirmed COVID-19 cases and there were three deaths. In the community, at least 26 COVID-19 other cases were confirmed and there was one death.[3]

16. Even if a venue promises to enforce social distancing protocols, and to assure that guests wear masks at all times when not seated at their tables, there are practical limits on a venue's ability to fulfill such promises when hosting a large gathering such as that at issue here, where 175 friends and family will join together from various locations to mingle and celebrate. Indeed, surveys show that, nationwide, at least one-third of Americans do not wear masks to

[2] *See, e.g.,* https://www.lohud.com/story/news/politics/2020/03/13/coronavirus-timeline-new-york-how-we-got-here-and-where-were-headed/5045463002/.

[3] *See* https://www.cdc.gov/mmwr/volumes/69/wr/mm6920e2.htm.

prevent the spread of coronavirus.[4] Even in New York, a significant minority of people are not consistently complying with social distancing protocols.[5]

New York Restrictions on Activities Designed to Prevent the Spread of Coronavirus

17. On March 7, 2020, Governor Cuomo issued Executive Order ("EO") 202 to combat the then-emerging COVID-19 pandemic, declaring a statewide disaster emergency until September 7, 2020, pursuant to New York State Executive Law § 29. Through EO 202, as amended and extended, the Governor suspended various state and local laws, rules, and regulations to the extent necessary to respond to, and ultimately recover from, the COVID-19 disaster emergency, again pursuant to New York State Executive Law § 29.

18. Following the initial issuance of EO 202, Governor Cuomo issued various supplemental Executive Orders, continuing the temporary suspension and modification of certain laws relating to the state of emergency. To date, the Governor has issued over fifty additional Executive Orders related to the COVID-19 disaster emergency, each of which suspends or modifies specified legal provisions pursuant to Executive Law § 29-a and makes declarations related to the disaster emergency. As relevant here, the Executive Orders have addressed social gatherings and the gradual reopening of various sectors of the economy, including the food-services sector.[6]

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[4] *See* https://www.pewresearch.org/fact-tank/2020/06/23/most-americans-say-they-regularly-wore-a-mask-in-stores-in-the-past-month-fewer-see-others-doing-it/

[5] *See* https://scri.siena.edu/wp-content/uploads/2020/07/ICS0620CV-Release-d_finalv2.pdf

[6] True and correct copies of relevant Executive Orders are available at https://www.governor.ny.gov/executiveorders.

19. To date, these efforts have been largely successful in halting the spread of COVID-19. After reaching a peak in early April of around 48% positive test results of those tested, the percentage of positive test results has been reduced as of this writing to less than 1% in every region of the State but Long Island, where it is 1.2%.[7]

Restrictions on Social Gatherings to Prevent Coronavirus Spread

20. On March 12, 2020, the Governor by executive order directed cancellation of "any large gathering or event for which attendance is anticipated to be in excess of five hundred people," directed that smaller gatherings be limited to 50 percent of a location's occupancy capacity, and directed closure of theaters for live performances in large cities. *See* EO 202.1.[8]

21. As we gained a greater understanding of the extent of the spread of the virus in New York, subsequent executive orders tightened these restrictions further. On March 16, 2020, EO 202.3 ordered the cancellation of any large gathering or event, including a gathering for purposes of religious worship, or a concert, conference or performance, if more than 50 people were expected to be in attendance. (ECF # 14-1, Ex. M.) That Executive Order also required gyms, fitness centers and movie theaters to cease operations. *See id*. And on March 18, 2020, EO 202.5 directed the closure of all places of public amusement. (ECF # 14-1, Ex. L.) Venues at which the public would watch any live entertainment or sporting event or were thus closed. *See id.*

[7] *See* https://forward.ny.gov/percentage-positive-results-region-dashboard.

[8] *See* https://www.governor.ny.gov/news/no-2021-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency.

22. I was involved in the process of developing these Executive Orders on the basis of what we knew of the COVID-19 virus at the time. We had input from a team of epidemiologists at the Department's Center for Community Health, which is within the Office of Public Health. The decision to cancel events in performances spaces, instead of merely limiting attendance, was based on several factors: not only the risk of transmission during the performance itself, but also the fact that scheduled performance events lead to large groups of people arriving at the same time, looking for seating at the same time, using the same common areas and amenities, and then leaving at the same time. These are all settings in which people congregate and mingle, often in close proximity within an indoor environment, and are thus the very conditions the State's COVID-19 Task Force was trying to prevent as a community mitigation strategy.

23. As conditions worsened in the State, on March 23, 2020, EO 202.10 imposed a total ban on all non-essential gatherings, such as "parties, celebrations or other social events." (ECF # 14-1, Ex. E.)

24. The closures and restrictions on particular sectors of the economy were designed, among other reasons, to minimize circumstances in which people, and groups of people, congregate and mingle, especially within indoor environments. According to available scientific information, close person-to-person contact is the primary vector in which COVID-19 is most likely to spread. To limit exposure to COVID-19 and slow its spread, the CDC recommends social distancing and limiting close contact with others outside your household in indoor and outdoor spaces including avoiding groups and crowded places.

25. With respect to the food-services sector in particular, the COVID-19 Task Force recognized that the complete closure of restaurants would not only potentially cripple that

industry, but would also cut off a significant food supply source to New York citizens, a service we consider essential. On the other hand, service of food and beverages in restaurants would inevitably result in significant congregating and mingling. The restaurant industry thus presented a complex case in which these interests needed to be balanced with care.

26. Ultimately, the Taskforce concluded that during a period when the State continued to experience a high rate of infection, the service of food and drink for consumption on the premises posed too great a risk of further spreading the virus, but that serving food and drink for takeout and delivery could be managed while minimizing congregating and mingling crowds. Accordingly, on March 16, 2020, EO 202.3 ordered that restaurants and bars cease serving patrons food or beverages on premises, allowing such establishments to provide take-out and delivery services only. (ECF # 14-1, Ex. M.)

The Loosening of Restrictions on Gathering Limits and the Phased Reopening of Sectors of the Economy

27. In May 2020, the Governor implemented New York Forward, the 10-Point Plan previously announced on March 22, 2020, for the phased and safe reopening and reduction of restrictions on businesses in various industries. Under the plan, as regions in the State satisfy identified COVID-19 testing and other metrics, they move through five potential phases of recovery, in which gathering limitations and other restrictions are gradually loosened.

28. At the same time, new Executive Orders gradually loosened the restrictions on gatherings. On May 21, 2020, EO 202.32 permitted a gathering of 10 of fewer for any religious service or ceremony. (ECF # 14-1, Ex. F.) The next day, EO 202.33 extended the same 10-person limit to non-essential gatherings held for any purpose. (ECF # 14-1, Ex. G.)

29. On June 15, 2020, EO 202.42 permitted any region that had entered Phase 3 of the State's reopening plan to allow gatherings of 25 or fewer individuals "for any lawful purpose or reasons." (ECF # 14-1, Ex. I.)

30. And on June 26, 2020, EO 202.45 permitted social gatherings of up to 50 people "for any lawful purpose or reason," so long as the region had reached Phase 4 of the State's reopening plan. (ECF # 14-1, Ex. J.) The permitted gatherings were still subject to Department of Health protocols relating to social distancing, face covering, cleaning, and disinfection. *See id.* Further, indoor gatherings could not exceed 50% of the building's capacity. *See id*.

31. Because all regions of the State are now in Phase 4, gatherings of up to 50 persons are once again permitted for any purpose, including weddings.

32. Additionally, as regions of the State progressed through the various phases of recovery, restrictions various sectors of the economy, including the food-service sector, were loosened accordingly. By Phase 2, restaurants were permitted to open outside areas for dining, subject to social distancing and other health and safety protocols. Thereafter, and continuing to Phase 4, restaurants are permitted to offer indoor dining, but at 50% of maximum capacity, exclusive of employees. [9] The capacity limit was designed to decrease density indoors. And there are other restrictions on the indoor dining how permitted. Among other things, tables—whether indoors or outdoors—must be separated by a minimum of six feet; patrons over age 2 must wear

[9] Indoor dining has been postponed in New York City, however. *See* https://www.governor.ny.gov/news/no-20248-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency.

face coverings at all times except when they are seated at their tables; individuals seated at each table must be members of the same party; and no more than 10 people can be seated at a table.[10]

33. In support of loosening the previously applicable restrictions and gradually reopening the State's economy, our goal was to balance the needs of each industry to conduct the core activities and operations of business with the health and safety interests of the business owners and operators, employees, customers, and the public at large—a primary feature of which is to avoid congregating and mingling of people, and groups of people, *anywhere* and promote appropriate social distancing of at least six feet between individuals *everywhere.*

34. The restrictions on restaurants are of critical importance. In the past few weeks alone, even with these restrictions in place, I have learned that fifteen clusters of Coronavirus victims have been traced back to indoor dining.

The Contemplated Wedding Celebration Is Not Comparable to the Other Events Cited by Plaintiffs and the Court

35. I have explained above, in paragraph 12, how the 175-guest wedding currently planned for August 22 differs from ordinary restaurant dining for a similar number of people. Plaintiffs and the Court also compared the anticipated gathering to three other group settings: (a) outdoor graduations; (b) special education classes; and (c) mass protests triggered by the killing of George Floyd. None of those examples provides a valid comparator.

Outdoor Graduations

10 https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Food_Services_Summary_Guidelines.pdf

36. In June 2020, with the rate of new infections at its lowest level since the beginning of March 2020, the State authorized outdoor graduations. As noted previously in paragraph 24, outdoor events are less likely to spread Coronavirus than indoor ones.

37. The State recognized that schools generally have large spaces, such as football fields, where those in attendance can be spread out, and that ample time can be allowed during which small groups of people, families for example, can enter and exit one at a time, to assure compliance with social-distancing protocols. Moreover, a graduation is a one-time event in a given community. Even then, DOH guidance on graduations strongly urges the use of other alternatives (i.e. virtual ceremonies, ceremonies where people stay in their cars, etc.). *See* https://coronavirus.health.ny.gov/system/files/documents/2020/06/doh_covid19_updatedgraduationguidance_061420.pdf

38. Outdoor graduations are also subject to numerous additional restrictions. Gatherings for the purposes of graduation ceremonies can occur only outdoors, and they are subject to a 150-person gathering limit, inclusive of all students, guests, teachers, administrators, and staff. All attendees are required to remain outdoors at all times, with the exception of restroom use, and must remain six feet apart from other attendees at all times, excluding immediate family members or household members. *See id.*

39. Signs, tape, or other materials must be used to demarcate six feet of distance between students and others while standing and walking. Any chairs for students, guests and staff must be at least six feet apart. *See id.*

40. If a school divides its graduating class into groups and conducts a separate ceremony for each group in order to comply with the 150-person limit, all CDC and NYSDOH

cleaning and disinfection protocols must be adhered to in between ceremonies, including cleaning and disinfection of any shared surfaces (such as chairs, podiums, handrails, etc.). *See id.*

41. All attendees at the graduation must wear a mask or face covering *at all times*, if they are over age two and able to medically tolerate a covering. Individual students may temporarily remove their masks or face coverings only while crossing the award area or having their individual photo taken. *See id.*

42. Moreover, all person-to-person contact during the celebration is prohibited. Individuals may not shake hands. Diplomas, or any other items, can only be handed from one designated individual (e.g. superintendent, principal) to students if both individuals are wearing a face covering and either using gloves or applying hand sanitizer between touching of objects. Otherwise, diplomas, or any other items, must be pre-arranged for students to retrieve them without direct interaction with other individuals. *See id.*

43. Sharing or exchanging materials of any kind, such as throwing graduation caps and giving of gifts poses an increased risk of transmission of COVID-19 and is prohibited, as well. *See id.*

44. Students may walk across a stage or area and pose for a picture individually. However single-direction flow should be marked to cross the graduation stage or take a photo, and the standing locations of graduates waiting to cross the graduation stage or take a photo must be clearly marked to ensure all individuals remain at least six feet apart at all times. *See id.*

45. It is strongly encouraged that the length of ceremonies be limited to shorten the time the individuals are exposed to each other. Additionally, group performances and speakers

should be limited, and precautions must be taken to ensure that individuals do not share microphones or other equipment, unless it is appropriately cleaned and disinfected between use. *See id*.

46. Staff must be assigned to monitor entrances and egresses to prevent congregation. The staggering of arrival times to ease crowds at access points should be considered. *See id.*

47. It is not realistic to expect a venue hosting a wedding, or other social celebration, to utilize these graduation-specific guidelines. As with its restrictions relating to social gatherings, discussed above, the State's graduation-specific restrictions are tied to the conduct that is traditionally expected at a graduation ceremony. That conduct is markedly different from that which takes place at a wedding celebration, where physical contact such as hugging is an evitable part of the celebratory nature of the event. Accordingly, the State's 50-person indoor gathering limit applicable to social gatherings is appropriately tailored to anticipate the conduct and interaction that any reasonable person would expect to occur at a social gathering.

Special Education Classes

48. Special education classes typically involve the same teacher with the same group of students. They consequently do not create the risk that infected people from different communities will mingle and then disperse, thus super-spreading the virus.

Civil Rights Protests

49. The State imposed gathering limits *without regard to purpose.* There is no exception for protests. No Executive Order allows or authorizes them. The question of how much force, if any, should be used to enforce these limits is left to local law enforcement

agencies, who must exercise discretion in these cases as in others in deciding whether and to what extent the use of force is warranted to enforce the law in light of all relevant circumstances.

Conclusion

50. New York is one of the few States in the United States that successfully reduced the community transmission of COVID-19 and has so far avoided the resurgence of COVID-19 cases. (*See* ECF #14-2 ¶¶40-41.) In the last two months across the country, spikes in COVID-19 cases have been tied to bars and restaurants in other States where there are reports of alcohol-associated partying and lack of adherence to face coverings, social distancing, and other rules to reduce the close congregation and comingling of patrons. The COVID-19 Task Force remains gravely concerned that the relaxing of the restrictions the State has implemented will lead to increases in the spread of the virus, resulting in a serious, but avoidable, impact on the health and lives of New York's population.

Howard Zucker M.D.

Dated: August 11, 2020
Albany, New York

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Commissioner Howard A. Zucker, M.D., J.D.

EXHIBIT 3

OCTOBER 5, 2020 Albany, NY

Video, Audio, Photos & Rush Transcript: Governor Cuomo Updates New Yorkers on State's Progress During COVID-19 Pandemic

Directs Schools in Hot Spot Zip Codes Identified by New York City to Temporarily Close In-Person Learning Beginning Tomorrow

Governor to Meet with Communities in Brooklyn, Queens and Rockland, Orange and Nassau Counties to Discuss Religious Gatherings

New York State to Oversee Enforcement in Statewide Hot Spot Clusters

20 ZIP Codes in Areas with Hot Spots - Brooklyn, Queens and Rockland and Orange Counties - Have 5.5 Percent Positivity Rate

Statewide Positivity Excluding Hot Spot ZIP Codes is 1.01 Percent; 1.22 Percent with Hotspot ZIP Codes Included

8 COVID-19 Deaths in New York State Yesterday

SLA and State Police Task Force Visits 587 Establishments; Observes 0 Establishments Not in Compliance

Governor Cuomo: “On schools, my number one concern has always been schools. I said to the parents of this state, I will not send—I will not allow your child to be sent to any school that I would not send my child, period. And you have my personal word on that. I’ve spoken to thousands of parents who have called up and said, I’m worried about sending my child to school. I said, I won’t allow a school to open that I wouldn’t send my child to. That’s my test.”

Cuomo: “If we’re going to keep religious institutions open, it can only be with two conditions. One, the community must agree, whether it’s the Jewish community, whether we’re talking about Black churches, whether we’re talking about Roman Catholic churches, the religious community has to agree to the rules and they have to agree that they are going to follow the rules. And they have to agree that they are going to be a full partner in the enforcement of the rules. That’s condition one. I’m going to meet with members of the ultra-Orthodox community tomorrow. I want to have that conversation directly, myself. This cannot happen again. If you do not agree to enforce the rules, then we’ll close the institutions down. I am prepared to do that. Second, after we receive the agreement, and agreement is only as good as the enforcement.”

Earlier today, Governor Andrew M. Cuomo updated New Yorkers on the state's progress during the COVID-19 pandemic and directed schools in hot spot ZIP codes identified by New York City to temporarily close in-person learning beginning tomorrow. The governor noted that New York State needs more data on the threat COVID-19 poses in those schools. Governor Cuomo also announced he will meet with the communities in Brooklyn, Queens, and Rockland, Orange and Nassau Counties to address religious gatherings. New York State will oversee enforcement in statewide hot spot clusters. Yesterday, Governor Cuomo announced that New York State is deploying personnel to directly enforce state guidance

within the hot spot ZIP codes. New York State will review the data in affected ZIP codes, gather more school data and determine criteria for reopening the schools.

In the top 20 ZIP codes in areas that have seen recent outbreaks - Brooklyn, Queens and Rockland and Orange Counties - 3,473 tests were conducted, yielding 193 positives or a 5.5 percent positivity rate. In the remainder of the state, 72,931 tests were conducted yielding 740 positives or a 1.01 percent positivity rate.

VIDEO of the Governor's remarks is available on YouTube here and in TV quality (h.264, mp4) format here.

AUDIO of today's remarks is available here.

PHOTOS are available on the Governor's Flickr page.

A rush transcript of today's remarks is available below:

Good morning. Sorry for the delay. I pride myself on my punctuality, but some of the issues that we are going to discuss today we were just working on resolving, and that's the reason for the delay. From my far right, Mr. Gareth Rhodes. To his left, Dr. James Malatras. To my right, Melissa DeRosa, secretary to the governor. To my left, Dr. Howard Zucker, health commissioner extraordinaire. To his left, the ever smiling and jovial Rob Mujica, budget director. Thank you and again I apologize for being late.

Today is day 219, but it feels like just yesterday that this started, doesn't it? Have that same freshness and energy. Groundhog Day, remember that movie, Groundhog Day? These are the numbers for today. Again, we're looking at two different universes now. It's a little different than the past. We're looking at the statewide numbers and we are hyper focused on what we call hot spots. Where was the first hot spot in the United States of America? Trivia contest. Yay. You win. Three questions today. We had the first hot spot cluster in the United States. New Rochelle, New York. So we know this well.

We're oversampling in the hot spots and we're testing all across the state. The 20 hot spot zip codes, 5.5 percent, okay. Our hot spot zip codes are where many states are right now. And you'll see it in some of the numbers. Statewide positivity rate is 1.01 outside of the hot spot zip

codes. 1 percent is an unbelievably low infection rate. And as we're going into the fall, I believe it's going to be practically unsustainable, but it's remarkable that we're that low right now. If you roll in the hot spot ZIP codes, which now distorts the balance of the sample, it's 1.2. Number of deaths, 8. They are in our thoughts and prayers. Statewide hospitalizations, 636, ICU, 140, statewide intubations, 70.

Context first. We're coming into the fall. We have been told since early March, beware the fall, beware the fall. Weather gets colder, more people move indoors, flu season, schools open. Schools opening are almost a predictor of increased infection rate. Colleges opening, turned out to be more problematic than we thought, colleges opening. SUNY's doing a great job. That's why Dr. Jim Malatras is here today. If SUNY was not doing a great job, Dr. Jim Malatras would not be here today. That's how you know that. So the fall is a challenging period, as we know. And we expect to see the infection rate go up in the fall.

Context, all over the globe, the infection rate is going up. All over the globe. Countries that were doing remarkably well are now seeing spikes. USA overall is going up, Israel has a real problem, EU has a real problem, Canada has a problem, Argentina has a problem, the UK has a problem. And the UK, remember, they were up, they were down, they're up again. You look across the nation, states are all going up. So context, beware the fall, has been right.

New York is the outlier in all of these international and national trajectories. We are the exception to the rule. This is the one situation where we want to be the exception to the rule, right. Other states up, other countries up. That in and of itself is a complicating factor, because New York State is not hermetically sealed. We put a quarantine in effect. I know, but people still drive in, it's still water through a screen, people are still coming in on flights, international flights, people in Texas are coming in, people in California are coming in, people in New Jersey are coming in, so that's an added problem for us. If you look at the hot spot infection rate yesterday, Western New York is a hot spot. Yesterday was a good day, 1.2 percent. Broome has a hot spot. Came out of a pub restaurant. But Broome has a hot spot. Orange County, Rockland County, Brooklyn, Nassau could be on there with a hot spot in one section of Nassau. These clusters have to be attacked. Picture that map as a map of dry grass, and picture those hot spots as embers within the field of dry grass, okay? That's how I think of it.

the only course is to run to those embers and stamp them out immediately and dramatically. That's why I don't sleep at night.

So you have to attack the clusters. How do you attack the clusters? Testing, testing, testing, testing. Get the facts. Follow the data. Contact tracing off the testing. Testing in itself doesn't tell you anything, just that you have a problem. Contact tracing helps you solve the problem.

And enforcement. Enforcement. Oh, that's so harsh, enforcement. Yeah. It's not. Enforcement is kind. You know why? Because enforcement saves lives. That's what enforcement does. Lack of enforcement is not kind. I believe that. I believe that and I have said that from day one and the State has been bullish on this and it has worked. It's worked. It's not like I'm putting forth a proposition. Enforcement works. Any rule is only as good as the enforcement. Don't speed. Are you enforcing it? Don't litter. Are you enforcing it? Any rule is only as good as the enforcement, especially when it's a rule that people don't want to follow. Seat belts – only as good as you enforce them. Don't text and drive – only as good as you enforce it. I say to people when I see them texting and driving, I say to them, I pull up, I roll down my window, I say hi, you are texting and driving, that is a violation of the law. I know because I passed that law. It's only as good as the enforcement.

We're New York Tough. What's within tough? Smart – follow the data, follow the analytics. Disciplined – do the enforcement, stick to the rules, stick to what's working. I've said this 100 times but at this point in my life I've said everything 100 times. Too many local governments are not doing enforcement. Warnings are not enforcement. "Put a mask on or I will ticket you" is not enforcement. "Store owner, you're not supposed to have this many people in your store" – we are past that. Everybody knows the rules. You don't have to pull over a car today and say, you know you're not supposed to text and drive. They know that. They know that. What you wind up saying is, I got away with it. We've been saying you get away with it for too long and we have lived through this repeatedly.

This was bars and restaurants. How many times did I come before you and say bars and restaurants are a problem. We have gatherings in front of bars and restaurants. Local governments have to do the enforcement. Week after week after week and it got worse and it got worse and it got worse. I then said forget it, I give up, the State government will do bars and restaurants and we put together a task force, we did over 1,000 violations, and you know

what? Compliance with bars and restaurants is markedly better than it has been. When was the last time any of you wrote a story about bars and restaurants and gatherings in front of bars and restaurants? Why? Because the owners know they'll lose their license. Oh, that's tough. No. We saved lives. I believe that. We saved lives.

New York City has clusters, Queens, Brooklyn. We also have clusters akin to this in Orange, Rockland, a little bit in Nassau. I just got off the telephone with Mayor de Blasio, Comptroller Stringer, Council Speaker Johnson, UFD President Mike Mulgrew. We had a very good conversation. It was a collaborative, positive conversation. It's a complex situation, worked on a number of levels, a number of issues and we talked through them. We have clusters where the viral infection rate is higher, about 3 percent. Where does the virus mainly transmit? Dr. Zucker was on the phone we asked him that question. Schools, which are also the place where different communities come together. So, my child goes to a private school, your child goes to a public school, but our children are on the same hockey team or on the same soccer team or they play together in the playground. Schools can be locations of transmissions. Religious gatherings, especially in these communities, New Rochelle, first hot spot, was an Orthodox Jewish man who went to a temple, hundreds of people, and a wedding, hundreds of people. Orthodox Jewish gatherings often are very, very large and we've seen what one person can do in a group. Look at this Rose Garden with the President, by the way. Outdoor event, oh, those are safe, outdoor events. No, no, no. Safer than indoor. Nobody ever said safe. Safer than indoor. And look at that growing list of people at a presidential Rose Garden event who are theoretically tested before they came in. How many people could have been infected? One, two? And look at the spread in the Rose Garden. You know what happens here. You've seen it over and over again. Third, public spaces. These are basically in priority order. Fourth are businesses where consumers may interact but that is way down on the list relatively. And the key to all of these areas is enforcement. All of them. We have rules for all of these areas. We have rules for all these areas in place now. Well then how's it increasing? Because people are not following the rules. That's why.

On schools, my number one concern has always been schools. I said to the parents of this state, I will not send—I will not allow your child to be sent to any school that I would not send my child, period. And you have my personal word on that. I've spoken to thousands of parents who have called up and said, I'm worried about sending my child to school. I said, I won't

allow a school to open that I wouldn't send my child to. That's my test. On the schools in these areas, not all of them have been tested. So we don't have data on all of the schools in these hotspot clusters. That troubles me. And on the telephone call we were all basically in agreement. They have sampled some schools in the clusters, but not all the schools. And these are the hotspot clusters, right? So if you have to prioritize testing, you want to go to these schools first because you know they are in hotspot clusters. So some schools in those clusters we have not yet done testing on. Better safe than sorry. I would not send my child to a school in a hotspot cluster that has not been tested. Where I did not have proof that the infection rate was low in that school. I would not send my child. I am not going to recommend or allow any New York City family to send their child to a school that I wouldn't send my child. We're going to close the schools in those areas tomorrow. And that's that.

Religious gatherings—the city's proposal does not close religious institutions. We know religious institutions have been a problem. We know mass gatherings are the superspreader events. We know there have been mass gatherings going on in concert with religious institutions in these communities for weeks. For weeks. I don't mean little violations. You're only supposed to have 50, they had 55. I'm talking about you're only supposed to have 50 outdoors, they had 1,000. These are pictures from the past couple of weeks. And these are just emblematic. You've all seen pictures like this for weeks. What did you think was going to happen? What did you think was going to happen? Religious institutions are mass gatherings and raise the greatest potential. It's schools and it's large mass gatherings. Schools, frankly, because they're students and that's where our heart goes, our priority goes. But in terms of numbers, it's large gatherings and large religious gatherings are large gatherings. These have been going on for weeks. You don't see masks. And you see clear violations of social distancing. When were these pictures from?

Gareth Rhodes: The one on the right is more recent than the one on the left.

Governor Cuomo: Okay, but they're in the recent past. So this has been going on for weeks. We've been talking about it for weeks. If we're going to keep religious institutions open, it can only be with two conditions. One, the community must agree, whether it's the Jewish community, whether we're talking about Black churches, whether we're talking about Roman Catholic churches, the religious community has to agree to the rules and they have to agree

that they are going to follow the rules. And they have to agree that they are going to be a full partner in the enforcement of the rules. That's condition one. I'm going to meet with members of the ultra-Orthodox community tomorrow. I want to have that conversation directly, myself. This cannot happen again. If you do not agree to enforce the rules, then we'll close the institutions down. I am prepared to do that. Second, after we receive the agreement, and agreement is only as good as the enforcement.

We have to have real enforcement. In these clusters and the other statewide clusters, the enforcement will help the community. If the rule is no more than 50 percent of the people in a Black church, I want someone at that door when 50 percent enter the church, a person there who says to the pastor, you agree to follow the rules. That's 50 percent. That's it, or we close it down. It does not work without enforcement, but both of those conditions have to be in place. And if I do not have the agreement from the religious community directly as a starting point then we will close down the religious institutions. If they do agree to do it in partnership, then I want a real enforcement capacity. We're not going to make the same mistake twice.

Tomorrow I'm going to meet with the larger congregations. New York City, Rockland, Orange, Nassau and have that conversation. That's step one. If we get past step one, then we need enforcement in place. Enforcement is enforced. I've said this to you I have this conversation with local officials all day long. "Well we issue warnings." That's not enforcement. "Well, we do public education." That's not enforcement. There is no person in the state of New York who needs you to tell them at this point, "you must wear a mask." They know that they must wear a mask. There is no need for public education. Find me the person who says, "I never heard that. Really, you have to wear a mask?" Find me the person in the state who says that. Enforcement is enforcement, okay? New York City only did 26 enforcement actions. Enforcement is, "here's a violation." New York City deployed 1,000 people for three days, 1,000 people for three days is what- 24,000 personnel hours. 24,000 personal hours you only did 26 enforcement actions? That's not enforcement.

We have to be more aggressive. I understand that it's impolitic. I understand the sensitivity in the community now. I also understand that you will see people die if we don't do more enforcement. I also understand that we have learned this experience before. This is the bars and restaurants story. Week after week after week we have to do the enforcement; nobody's

doing the enforcement. Week after week after week nothing changes; the state took it over: I did 1,200 enforcement action; 228 immediate license revocations, just on bars and restaurants. Now, was I happy about doing 1,200 enforcement actions? No. Immediate license revocation is very difficult. That business basically closes. People lose their jobs. You don't want to do this, but life has options, my friends. You don't do this, the virus spreads, and people die. You tell me which is the nice and kind and responsible course of conduct? 1,200 enforcement actions just on bars and restaurants: that's enforcement.

The state is going to take over the enforcement oversight in all the hotspot clusters, okay? Local governments will need to provide us with personnel, but the state will take over the enforcement with the local personnel. I do not have enough state personnel to supplement every local police department in the state. To give you an idea, we have about 5,000 state troopers; there are about 35,000 NYPD. Most of this enforcement is also going to be done by Health Department officials, other agency-type officials. I said from day one for the local officials, I understand this is all tough stuff and politicians like to make people happy, as a general rule. I like to make people happy as a general rule too. I just have a superseding rule, which is I like to keep people alive. I'd rather you be alive and angry at me, then have people happy with me. I'm elected to do a job and be responsible and that's what I want to do. I said from day one, blame me. If you have to revoke a bar owners license? Blame me. We have to close a temple because it's over 50 percent? I'll do it. We have to close a Roman Catholic Church? I'll do it. I had closed the Saint Patrick's Day parade. I did it. But none of these rules are going to make a darn, if you don't have the enforcement.

Another issue that came up on the phone which is right: targeting by zip codes is imperfect. The virus doesn't travel by zip code. Neighborhoods and communities aren't organized by zip codes. Zip codes can be arbitrary and can leave out some communities that are infected. Zip codes can include communities that have a low infection rate. This is a zip code in Brooklyn. The white areas are inside the zip code, but we have the infection rate by address. You have areas in that zip code that aren't infected, so the ZIP code as a template is rough justice, but only rough justice and we can refine that. It takes some review and analysis, but look at the actual cases that you have again by address and make sure you're including the relevant zone, not just the ZIP code. If you have to go a little bigger, you go a little bigger. If you have to, if you don't have an infection rate in certain communities, don't include those infection

rates, so the ZIP codes as a starting place, but we then want to have a team of epidemiologists and demographics people actually look at the maps and where the infection rate is and make sure we're drawing the right circle, or the right borders. And the Comptroller raised that point, and it's a good point, and the health officials agree.

When we did New Rochelle, we did a circle. Every other state, every other country, does a political subdivision: a county, a city, a town. So, the ZIP codes are not the best template to use and we want to refine that template. For example, we're closing schools in ZIP codes, but the school district is different than the ZIP code — so just because a school is located in that ZIP code doesn't mean the students come from that ZIP code. The catchment area can go opposite direction from the ZIP code, but right now that's the best we have with the New York City data but we're going to refine this.

Non-essential businesses, public spaces — remember it's mass gatherings. Public spaces, schools should close, but we need to have the right template designed before we can do that with full accuracy. The only action we're taking today on this data — we are using the ZIP codes to close those schools tomorrow. If we expand the regions and that then includes other schools, we'll then notify people as soon as we know. But for today, all we have is the ZIP code data, so it's the schools in those ZIP codes, and as we refine it, we'll let you know.

So in total, schools close tomorrow. I'm going to be meeting with the Orthodox community tomorrow, see if they will agree to live and abide by the rules and advocate compliance. If the rabbi advocates compliance, that would be a very positive start. If the communities don't agree with the rules, which is possible — I had some conversations where some religious leaders believe they have herd immunity, which is not true. Some people believe, that, followed politics, and think that masks are ineffective and this is all a hoax. That's not true. But if they don't agree, then the state will take action. If they do agree and we have the ability to enforce, then we will go with reduced guidance: 50 percent rules, primarily outdoors, etc. We're going to do statewide enforcement, state supervised with local resources, but enforcement has to be enforcement. We need better templates, geographic templates, than ZIP codes. We also need better data on these schools in these hotspot ZIP codes, more testing, faster testing so we find out exactly where we are, and we need to establish criteria

for reopening. When do the areas reopen? What testing data, what percent over what period of time? That has to be established.

So, in closing, New York City is not unique. We have this all across the state. Again, we started with the first hotspot and it's going to continue. It is the way of the world; it's the way this virus moves. It starts in a cluster; it always starts in a cluster wherever, and the question always becomes, "can you stop it in the cluster?" Can you stamp out the embers before it's a fire out of control. That's always the question. That was the question in Wuhan, China. Can you get to Wuhan and stamp it out before it spread? That was the question in New Rochelle and we did stamp it out in New Rochelle by the way, and every state is dealing with it. But's a statewide issue. It's testing and it's enforcement. That's what we're down to. We're New York tough, smart, disciplined. Just to reiterate, the fall is perilous. We have to stay vigilant.

When we talk about 1 percent, I understand that it is a hyper-ambitious goal. You have to remember we were at a 20 percent infection rate at one time and I understand that we are surrounded by higher infection rates. New Jersey is 2.1; they were 3 last week, OK? Connecticut is 1.3; they were 1.5 and Connecticut has always been a relatively easier situation than New York. I'm envious of my friend Governor Ned Lamont. Pennsylvania's at 7.9 percent. We have people coming in and out of here every day from these states. We have people flying in from other countries. So, 1 percent. Hyper ambitious, unrealistic. Keep the bar high, raise the goal, and we do the best we can. But, I'm also realistic and these are the facts that surround us. That's why right now, you take out our hot spots, we have one of the lowest infection rates in the United States of America, and that is the gold standard, and that's what we want to try to achieve, even if it is not fully realistic. But, New Yorkers have done an amazing job, highest infection rate at one time, lowest in the nation. God bless New Yorkers, and I want to make sure as governor I'm doing everything I can to honor and fulfill their sacrifice and their toughness and their love for each other, and we're doing that.

Contact us by phone: Albany: (518) 474 - 8418
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Contact us by email: Press.Office@exec.ny.gov

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

THE ROMAN CATHOLIC DIOCESE OF BROOKLYN, NEW YORK,

Plaintiff,

vs.

GOVERNOR ANDREW M. CUOMO, in his official capacity,

Defendant.

DECLARATION

Civil No. 20-cv-4844

Howard A. Zucker, M.D., J.D., on the date noted below and pursuant to § 1746 of title 28 of the United States Code, declares the following to be true and correct under penalty of perjury under the laws of the United States of America:

Background and Qualifications

1) I am the Commissioner of the New York State Department of Health ("Department"). I make this declaration in my capacity as the Commissioner after consultation with Department program staff directing the initiatives detailed below. I respectfully submit this declaration in order to place before the Court certain testimony and documents relevant to the relief requested. I am familiar with the matters set forth herein, either from professional knowledge, conversations with Department staff, or on the basis of documents that have been provided to and reviewed by me. I have been asked to assist New York State in its response to the COVID-19 public health emergency. I am a member of the Governor's COVID-19 Response and Recovery Task Force (the "COVID-19 Task Force").

2) I have extensive knowledge of pediatric medicine and care and am aware of many family health issues. I am board-certified in six specialties/subspecialties and trained in pediatrics at Johns Hopkins Hospital, anesthesiology at the Hospital of the University of Pennsylvania, pediatric critical care medicine/pediatric anesthesiology at The Children's Hospital of Philadelphia, and pediatric cardiology at Children's Hospital Boston/Harvard Medical School. I was a professor of clinical anesthesiology at Albert Einstein College of Medicine of Yeshiva University and pediatric cardiac anesthesiologist at Montefiore Medical Center in the Bronx. I also served as associate professor of clinical pediatrics and anesthesiology at Columbia University College of Physicians & Surgeons and pediatric director of the ICU at New York Presbyterian Hospital. I am a former Columbia University Pediatrics Teacher of the Year.

3) As Commissioner of the Department, I must "take cognizance of the interests of health and life of the people of the state, and of all matters pertaining thereto and exercise the functions, powers and duties of the department prescribed by law." Public Health Law ("PHL") §206(1)(a).

4) I preside over the State's Office of Public Health, which includes epidemiology, the Medicaid program, the New York State Public Health and Health Planning Council, and the Wadsworth Center, New York's premier public health lab, as well as the entire health care workforce, and health care facilities.

5) In the last nine months, I have been personally involved in the development and implementation of what is known as the "New York State on PAUSE" initiative—restrictions implemented through a series of executive orders and associated guidance designed to stop the transmission of the novel coronavirus (COVID-19)—and I am also familiar with the detailed plan

that the State adopted to allow the safe reopening of each New York industry, including all gatherings. I am familiar with the facts set forth herein based upon personal knowledge, discussions with Department staff, and Department records.

6) I make this declaration – based upon, among other things, my personal knowledge; my studies and research on matters related to infectious diseases; and my work and discussions with other infectious disease experts and public health officials – to, among other things, further clarify the process and the creation, designation, and monitoring of the zones through the Governor's Cluster Action Initiative ("Initiative"); the tracking of the disease; and the State's response generally to this global pandemic.

7) The data throughout New York shows the State has maintained an average transmission rate around 1% or below since March 22, 2020, when the New York State on PAUSE plan was initiated, but there have been outbreaks and spikes in areas necessitating immediate attention to contain the virus and mitigate spread throughout the community.

8) The intention is to create an aggressive and targeted approach to contain and control the spread of the virus from the immediate area where the cluster is located and to a larger region.

COVID-19 Mapping

9) The Initiative was created to divide clusters and the areas around them into three categories with successively higher restrictions within each one: Red Zone - cluster itself; Orange Zone - warning zone; and Yellow Zone - precautionary zone.

10) The creation of the Zones is intended to be a short-term, but aggressive, approach to contain the threat of the virus spreading throughout a community and creating a larger potential super-spreader event.

11) Members of my team in the Department closely track the metrics related to COVID-19 on a daily basis to determine areas of particular concern that may need additional resources such as increased testing access, compliance enforcement, or targeted pause on economic and/or social activities. My staff and I work with members of the Governor's COVID-19 Response and Recovery Task Force ("COVID-19 Task Force"), by, among other things, providing case data and rates to help inform decisions on what steps the State needs to take to address areas of concern with higher positivity rates.

12) An area may be placed in a "Red Zone" if the following factors are met:

- The area is a defined geographic area (which may or may not align to geopolitical or other common geographic subdivisions, such as county, zip codes, or contiguous neighborhoods) has a 7-day rolling average positivity rate of 3% or higher for a sustained period of time (metrics adjusted for population size and population density);
- Positive cases reflect community spread and cannot be solely explained by a contained cluster in a single institution (e.g., nursing home, factory, college, etc.); and
- The Department, in consultation with the local departments of health, finds that it is in the best interest of public health for the area to be placed in Red Zone status.

13) Once an area has been designated as a "Red Closure Zone," the following steps are taken:

- The Department, in coordination with local health authorities, uses case incidence and mapping data to refine boundaries that balance epidemiological priorities with geographic realities;
- The Department, in coordination with local health authorities, uses case incidence and mapping data to refine and establish boundaries for "buffer zones" around the Red Closure Zone to ensure spread

from the closure zone does not broaden into the wider community. In densely populated urban areas, two buffer zones – an Orange Warning Zone and a Yellow Precautionary Zone -- may be required; and

- The Department issues guidance specific to each warning zone and the status of activities within the zone (i.e., mass gatherings, businesses, schools, etc.).

14) After 14 days, the Department, in coordination with local health authorities and in consultation with global health experts, determines whether data sufficiently demonstrate that the area has successfully reduced viral spread to a level able to be contained given testing, contact tracing, and other health system metrics. Based on this data and expert advisement, the Department decides whether the Red Closure Zone will be extended, modified, or ended.

Mapping Data

15) The creation of the cluster zones is map-based and formulated from data submitted to the Department and analyzed by Department staff.

16) We rely upon data submitted to the State's Electronic Clinical Laboratory Reporting System ("ECLRS") to map the zones. Laboratories in New York State use this system for secure and rapid transmission of reportable disease information to the Department, county health departments, and the New York City Department of Health and Mental Hygiene ("NYCDOHMH").

17) A laboratory is required to report all COVID-19 tests results to the State and will upload data files related to these tests. It is this data analyzed and used to generate a map indicating the location of these cases (COVID-19 positive test results). The cases are represented as dots on a map and indicate areas with high positivity percentages. My team

works with members of the Task Force to look first at the zip codes with the highest positivity rates and then break that down further based on individual addresses using the data pulled from ECLRS.

18) The Red Zone contains the highest level and concentration of positive cases, which is the cluster itself and is created by analyzing the mapping of the positivity rates and using streets as a boundary.

19) The Red Zone is created by pulling data form ECLRS and analyzing it to map out cases as dots. It is the concentration of dots that indicate a high level of virus in an area which in turn delineates the boundaries of the red zone. When we are mapping the positive cases and creating the zones, we are not looking at the businesses or entities located within those zones, only the number and grouping of positive cases. We look solely at the data and do not take into account who or what are located in that zone – whether it is a non-essential business, school, yeshiva, church, synagogue, or a car dealership – as they all face restrictions, if justified by the scientific data, whether or not that particular school, car dealership, or religious group has positive cases within it. The data drives the zone.

20) There is no specific percentage or threshold to determine when an area should be designated as an Orange or Yellow Zone, as it is a nuanced process that takes multiple factors into account and not solely the positivity percentage. It is important, for instance, to consider the population density of the area. The Department analyzes the number of cases within the Orange and Yellow Zones to determine the rates positive cases. The positivity percentages within those zones indicate the level of spread beyond the cluster and require some level of mitigation to prevent any further spread of the virus.

21) The Orange Zone serves as a buffer to the Red Zone and is generally a five block or quarter mile boundary around the Red Zone tracked by streets. The goal of having such an area, which is given more scrutiny, is to prevent the cluster zone from expanding further and keep it contained.

22) The Yellow Zone serves as a buffer to the Orange Zone with the same goal of containing the virus and not allowing the cluster to expand.

Positivity Rates

23) The positivity rates are pulled daily from ECLRS, are mapped out, and are analyzed to determine if a particular cluster is improving or getting worse. The positivity rates in all red zones as of October 15, 2020 is 4.8% a reduction of the 7.9% positivity rate the week of September 20 through September 26 and reducing each subsequent week. While this indicates that the targeted restrictions are having the desired effect to mitigate and control the spread of the virus, this is still approximately 4 times the overall state positivity rate, which is still highly concerning since it is over 1%.

24) Any re-evaluation for a reduction in restrictions would not occur before 14 days since that is the incubation period for the virus. This data and analysis are provided to the Governor and his team on a daily basis, including the COVID-19 Task Force.

25) Any reduction or increase in restrictions will occur based on the analysis of all of the available data. While we do not speculate on what future actions will be taken since this is an ever-evolving process, driven by the positivity rates and trends over time, the goal is clearly to mitigate community spread and continue the phased reopening throughout the state.

26) Many different actions can be taken based on an analysis of the data and due to its

evolving nature. This is a highly calibrated process to ensure that the most precise restrictions are in place. The Department receives new data throughout the day creating fluctuations in numbers and rates. The data is continually reassessing to fine tune the statistics to ensure that we, the Task Force, and the Governor have the most current data available to indicate progress, or lack thereof, in the zones.

Modification of the Zones

27) The Department and the Task Force are continually monitoring and testing the data related to transmission, including the positivity rates and population density, to inform decisions on zone designation and possible modification.

28) Where the data shows sustained decrease in community transmission in the cluster, the Department, the Task Force, and the Governor assess the change in transmission rates and all available relevant information related thereto to determine whether zone modification is warranted and would protect the public health of New Yorkers.

29) With respect to any easing of restrictions in the Red Zone, the Department, the Governor's team, and the Task Force will continue to monitor and assess the current decreasing trend in that zone to ensure that it a sustained downward trend. Upon this review, if the operation has been successful, the designation of a Red Zone may be modified or lifted altogether.

Dated: October 16, 2020
Albany, New York

Howard A. Zucker, M.D., J.D

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 22nd day of October, two thousand twenty.

Before: William J. Nardini,
Circuit Judge.

ORDER

The Roman Catholic Diocese of Brooklyn, New York,

Plaintiff - Appellant,

v.

Governor Andrew M. Cuomo, in his official capacity,

Defendant - Appellee.

Docket No. 20-3590

Appellant The Roman Catholic Dioceses of Brooklyn, New York moves for an emergency injunction pending appeal. Appellant seeks a decision no later than October 23, 2020 at 5:00 pm. Appellee Governor Andrew M. Cuomo opposes the motion.

IT IS HEREBY ORDERED that the request for an administrative stay of the district court decision denying Appellant's motion for a preliminary injunction is DENIED. The motion is referred to the panel sitting on November 3, 2020. It will be heard in tandem with the motion seeking similar relief filed in Agudath Israel of America et al., v. Andrew M. Cuomo, Docket No. 20-3572. Appellee's opposition to the motion is due by noon on October 27, 2020. Appellant's reply is due by noon on October 29, 2020.

For the Court:
Catherine O'Hagan Wolfe,
Clerk of Court

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November 7, 2020

VIA ECF

Hon. Catherine O'Hagan Wolfe
Clerk of Court
United States Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Re: *The Roman Catholic Diocese of Brooklyn, New York v. Cuomo*, Case No. 20-3590

Dear Ms. Wolfe:

I write as counsel to Plaintiff-Appellant The Roman Catholic Diocese of Brooklyn, New York (the "Diocese"), in this appeal, pursuant to Federal Rule of Appellate Procedure 28(j), to submit a supplemental authority relevant to the Diocese's pending motion for an injunction pending appeal. On Friday, November 6, Governor Cuomo announced modifications to the "zones" that are subject to Executive Order 202.68. A true and correct copy of the Governor's press release is attached. Following these modifications, six of the Diocese's churches, with normal capacities ranging from 500 to 950 persons, now fall in "red" zones. Absent an immediate injunction pending appeal, these six churches will effectively have to remain shut, as they continue to be subject to the 10-person capacity cap in "red" zones at issue on this appeal.

Respectfully,

/s/ *Randy M. Mastro*
Randy M. Mastro

Enclosure

cc: Counsel for Defendant (via ECF)

NOVEMBER 6, 2020 Albany, NY

Governor Cuomo Announces Updated COVID-19 Micro-Cluster Focus Zones

Based on Progress Controlling COVID Spread, Zones Change in Brooklyn, Queens - Far Rockaway, and Rockland and Orange County

Zones Do Not Change in Queens - Kew Gardens/Forest Hills and Broome, Steuben, Chemung Counties

New Yellow Precautionary Zone in Port Chester, Westchester County

SUNY to Test All On-Campus Students Before Holidays; Private Colleges Asked to Consider Similar Plans

Positive Testing Rate in All Focus Zone Areas is 3.16 Percent; New York State Positivity Outside All Focus Zone Areas is 1.84 Percent

Statewide Positivity Rate is 1.99 Percent

18 COVID-19 Deaths in New York State Yesterday

Governor Andrew M. Cuomo today announced updated COVID-19 micro-cluster focus areas in New York State. Brooklyn's Red Zone focus zone area has new boundaries to reflect a decreased positivity rate and new daily cases in certain neighborhoods. Based on data

metrics including testing results and hospitalization rates Queens - Far Rockaway's yellow zone has been removed; Rockland County's red zone focus areas will change to an orange warning zone; and Orange County's orange zone will change to a yellow precautionary zone. Focus zones in Queens - Kew Gardens/Forest Hills and Broome, Steuben and Chemung counties will not change. The Governor also announced a new yellow precautionary zone focus area in Westchester County.

SUNY will test its in-person students before sending them home for Thanksgiving and will keep them home for the rest of the semester. The Governor asked that private colleges in New York consider adopting similar plans.

"As a matter of context, we are obviously in a different phase with COVID, and we've been talking about it for weeks, but we have to fully acknowledge it. The fall phase the scientists all predicted was going to be worse. You're seeing global and national surges that are dramatic, and that's the new reality of COVID. The challenge for our state, like other states, is managing the increase," **Governor Cuomo said.** "We are going to modify some micro-cluster zones in response to declining positivity rates. In Erie, Monroe, Onondaga Counties, we're going to study them over the weekend. We're going to talk to the elected officials over the weekend, try to find out exactly what is going on, so that we can design a micro-cluster strategy that is responsive. But at these numbers, and in these areas, a micro-cluster response is appropriate. We tailor the micro-cluster strategy to the particulars of that area, and therefore we want to have conversations over the weekend and then I'll have an announcement on Monday as to exactly what we're going to do. Those are the highest places in the state, but again, they're lower than Connecticut, New Jersey and Pennsylvania."

Modifications to Current Focus Zones

Brooklyn - Modified Red Zone and New Yellow Zone - Click Here for Map

Since early October, Brooklyn's Red Zone has seen a positivity decline from 5.9% to 3.1% Based on case prevalence data and analysis of where positivity rates remain high and where they have declined, the Brooklyn's Red Zone was redrawn to include a smaller geographic area with a modified Yellow buffer zone area.

Queens - Far Rockaway - Yellow Zone Removed

The positivity in this zone has been consistently in 1%-2% range effectively over a ten-day period with low number of hospitalizations and new daily cases. This zone will be removed and cases continued to be monitored.

Rockland County - Red Zone Changes to Orange Precautionary Zone, Yellow Buffer Zone Remains - Click Here for Map

Since early October, Rockland's Red Zone has seen a positivity decline from 9.8% to 3.6%, meeting the metrics for transitioning from a Red Zone to an Orange Warning Zone. The Yellow buffer zone will remain.

Orange County - Red Zone Changes to Yellow Zone - Click Here for Map

Orange County's Warning focus zone has been under 3% positivity, and hospital admission rates have declined, meeting the metrics for transitioning to a Yellow Precautionary Zone. The buffer zone will be removed.

Focus Zones Without Modifications

Queens - Kew Gardens/Forest Hills - Click Here for Map: The positivity in this zone is currently 2.69% (7-day rolling average), effectively flat over a ten-day period. No changes to zone.

Broome County - Click Here for Map: Yellow Precautionary Zone is unchanged (4.05% current 7-day positivity, down from 7.44% ten days ago)

Steuben County - Click Here for Map: Yellow Precautionary Zone is unchanged (4.15 current 7-day positivity, down from 6.22% ten days ago)

Chemung County - Click Here for Map: Orange Warning zone is unchanged (6.84% current 7-day positivity, down from 8.02% ten days ago)

New Focus Zones

Westchester County - New Yellow Zone - Click Here for Map

The Port Chester area along the Connecticut border has had a sustained average positivity rate above 2.5%, with upticks in new positive cases and hospital admissions, meeting metrics for a yellow zone designation. In response to an increase in cases in Port Chester, NY, the New York State Department of Health, Westchester County Department of Health and Open Door Family Medical Center have coordinated to provide rapid testing at a new site below. To schedule an appointment please follow this link: https://apps.health.ny.gov/doh2/applinks/cdmspr/2/counties?OpID=11900360 or call 914-995-7425.

Open Door

5 Grace Church Street

Port Chester, NY 10573

Saturday, November 7, from 9:00 AM - 2:00 PM

Monday, November 9, from 10:00 AM - 5:00 PM

Tuesday, November 10, from 10:00 AM - 5:00 PM

The Governor noted that the positive testing rate in all focus areas under the state's Micro-Cluster strategy is 3.16 percent, and outside the focus zone areas is 1.84 percent. Within the focus areas, 19,084 test results were reportedyesterday, yielding 604 positives. In the remainder of the state, not counting these focus areas, 141,621 test results were reported, yielding 2,605 positives. Full results for tests reported yesterday, the day prior, the current 7-day rolling average, and last two weeks is below:

FOCUS ZONE	10/4-10/10 % Positive	10/11-10/17 % Positive	10/18-10/24 % Positive	10/25-10/31 % Positive	Current 7-day rolling average	Day Prior (11/4) % Positive	Ye (P
Brooklyn red-zone	5.86%	5.29%	4.44%	4.14%	3.08%	2.96%	

focus area % positive							
Brooklyn yellow-zone focus area % positive	1.36%	1.93%	2.38%	2.68%	2.63%	3.06%	2
Queens Kew Garden Hills/Forest Hills yellow-zone focus area % positive	2.27%	2.03%	2.40%	2.68%	2.69%	2.68%	3
Queens Far Rockaway yellow-zone focus area % positive	2.71%	2.70%	2.00%	2.16%	2.12%	1.63%	1
Rockland red-zone focus area % positive	9.77%	4.54%	3.65%	4.33%	3.58%	3.81%	2
Orange orange-zone focus area % positive	12.41%	4.62%	2.64%	2.57%	2.78%	0.75%	8
Broome yellow-zone focus area % positive	3.63%	4.05%	6.39%	4.25%	4.05%	3.47%	
Steuben yellow-zone focus area % positive	7.82%	7.52%	4.42%	4.50%	4.15%	3.68%	

Chemung orange-zone focus area % positive	6.49%	7.12%	8.36%	6.10%	6.84%	6.64%	
All focus area statewide % positive	3.18%	3.00%	3.27%	3.23%	3.00%	3.04%	
Statewide % positive with all focus areas included	1.18%	1.16%	1.31%	1.54%	1.72%	1.86%	
Statewide % positive without allfocus areas included	1.01%	1.06%	1.06%	1.34%	1.55%	1.70%	

Today's data is summarized briefly below:

- **Patient Hospitalization** - 1,321 (+44)
- **Patients Newly Admitted** - 202
- **Hospital Counties** - 45
- **Number ICU** - 285 (+17)
- **Number ICU with Intubation** - 129 (+1)
- **Total Discharges** - 80,368 (+143)
- **Deaths** - 18
- **Total Deaths** - 25,910

Each region's percentage of positive test results reported over the last three days is as follows:

REGION	TUESDAY	WEDNESDAY	THURSDAY

Capital Region	1.2%	1.3%	1.7%
Central New York	2.7%	2.1%	2.5%
Finger Lakes	2.9%	3.7%	3.2%
Long Island	1.1%	2.0%	1.9%
Mid-Hudson	2.5%	2.4%	2.5%
Mohawk Valley	0.6%	0.8%	1.2%
New York City	1.3%	1.6%	1.9%
North Country	1.9%	0.6%	1.4%
Southern Tier	1.1%	1.1%	1.0%
Western New York	3.4%	3.3%	3.3%

Each New York City borough's percentage of positive test results reported over the last three days is as follows:

BOROUGH	TUESDAY	WEDNESDAY	THURSDAY
Bronx	1.4%	1.9%	2.2%
Brooklyn	1.6%	1.7%	2.0%
Manhattan	0.9%	1.2%	1.0%
Queens	1.2%	1.6%	2.0%
Staten Island	2.1%	3.0%	3.5%

Of the 522,021 total individuals who tested positive for the virus, the geographic breakdown is as follows:

County	Total Positive	New Positive
Albany	3,942	65
Allegany	414	25

Broome	3,927	43
Cattaraugus	591	9
Cayuga	496	10
Chautauqua	1,094	13
Chemung	2,046	50
Chenango	449	6
Clinton	292	4
Columbia	782	8
Cortland	622	9
Delaware	222	9
Dutchess	5,710	41

Erie	14,338	215
Essex	213	1
Franklin	114	9
Fulton	372	2
Genesee	450	9
Greene	527	4
Hamilton	19	0
Herkimer	434	10
Jefferson	260	11
Lewis	171	4
Livingston	393	18

Madison	627	11
Monroe	8,398	161
Montgomery	292	9
Nassau	51,164	246
Niagara	2,274	43
NYC	268,663	1,203
Oneida	2,993	47
Onondaga	6,257	135
Ontario	778	20
Orange	14,221	86
Orleans	429	7

Oswego	711	22
Otsego	440	3
Putnam	1,921	25
Rensselaer	1,175	14
Rockland	18,756	73
Saratoga	1,503	21
Schenectady	1,687	21
Schoharie	120	1
Schuyler	172	6
Seneca	167	4
St. Lawrence	461	12

Steuben	1,176	17
Suffolk	50,210	177
Sullivan	1,882	20
Tioga	792	17
Tompkins	678	3
Ulster	2,599	11
Warren	475	1
Washington	377	16
Wayne	639	17
Westchester	41,720	178
Wyoming	230	4

Yates	156	3

Yesterday, 18 New Yorkers died due to COVID-19 in New York State, bringing the total to 25,910. A geographic breakdown is as follows, by county of residence:

Deaths by County of Residence	
County	**New Deaths**
Allegany	2
Cayuga	1
Dutchess	2
Kings	4
Nassau	2
Oneida	2
Onondaga	1

Queens	1
Schenectady	1
Tioga	1
Westchester	1

Contact the Governor's Press Office

Contact us by phone: Albany: (518) 474 - 8418
New York City: (212) 681 - 4640

Contact us by email: Press.Office@exec.ny.gov

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

BARBARA D. UNDERWOOD
SOLICITOR GENERAL
DIVISION OF APPEALS & OPINIONS

November 9, 2020

Hon. Catherine O'Hagan Wolfe
Clerk of Court
U.S. Court of Appeals for the Second Circuit
40 Foley Square
New York, NY 10007

Re: *The Roman Catholic Diocese of Brooklyn, New York v. Cuomo*, No. 20-3590

Dear Ms. Wolfe:

Defendant-appellee Andrew Cuomo submits this supplemental letter concerning plaintiffs-appellants' motion for an injunction pending appeal. Earlier today, Governor Cuomo announced that the existing metrics have demonstrated continued progress in controlling the spread of COVID-19 in the micro-cluster area designated as a Red Zone in Brooklyn and, as a result, the Red Zone will be downgraded to an Orange Zone.[1] Thus, there are no longer any areas in New York designated as Red Zones, and plaintiffs have no basis at this time for preliminary injunctive relief arising from any Red Zone-specific restrictions.

[1] *See* https://www.governor.ny.gov/news/governor-cuomo-announces-updated-covid-19-micro-cluster-focus-zones-0.

Respectfully submitted,

/s/ Brian D. Ginsberg
Brian D. Ginsberg
Assistant Solicitor General

cc: Counsel of Record (via ECF)