

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION**

THE BELOVED CHURCH, an Illinois Not-for-Profit Corporation, and PASTOR STEPHEN CASSELL, an individual,)	
)	No.
)	
Plaintiffs,)	
)	
v.)	
)	
JAY ROBERT PRITZKER, Governor of the State of Illinois, DAVID SNYDERS, Sheriff of Stephenson County, Illinois, STEVE SCHAIBLE, Chief of Police of the Village of Lena, Illinois, and CRAIG BEINTEMA, Administrator of the Department of Public Health of Stephenson County, Illinois, in their official capacities,)	JURY TRIAL DEMANDED
)	
Defendants.)	

VERIFIED COMPLAINT

Plaintiffs, The Beloved Church of Lena, Illinois, and Pastor Stephen Cassell, by and through their counsel, the Thomas More Society, complain of Defendants Jay Robert Pritzker, David Snyders, Steve Schaible, and Craig Beintema, as follows:

I. Introduction

1. Fear of the coronavirus epidemic has gripped Illinois, the nation, and the world. In response to the initial surge in coronavirus cases, numerous states imposed “stay-at-home” orders, in order to “flatten the curve” of the spread of the virus. Due to the unified efforts of the American people, the curve has flattened nationally, and in Illinois.

2. In many states, these stay-at-home orders protected the constitutional rights of churches and religious believers during the coronavirus epidemic, but not so in the Land of Lincoln.

3. Defendant Pritzker in his orders declared churches and church ministries “non-essential” and commanded them to shut down.¹ Pritzker has forbidden congregants from leaving their homes to attend church or church ministries. On the eve of Easter, the holiest day on the Christian calendar, Pritzker expressly prohibited even no-contact, drive-in services in Illinois church parking lots. At the same time, he declared a laundry list of businesses to be “essential,” from liquor stores to lawyers to landscapers.

4. Pritzker’s statements and actions during the coronavirus epidemic demonstrate an illegal and discriminatory hostility to religious practice, churches, and people of faith. He has flagrantly violated the fundamental religious liberties of Illinoisans, in violation of the First Amendment’s Free Exercise clause and parallel provisions of the Illinois Constitution and statute.

5. In recent days, a number of law enforcement officials (*e.g.*, Douglas County Sheriff Joshua Blackwell, Energy Police Chief Shawn Ladd, Woodford County State's Attorney Greg Minger, Tazewell County Sheriff Jeff Lower) have publicly announced they will refuse to enforce Pritzker’s orders, some going so far as to state they are unconstitutional, such that enforcement would be a violation of their oath of office.²

¹ Defendant Pritzker’s stay-at-home orders divide businesses into “essential” and “non-essential,” with essential businesses allowed to operate with minimal alterations while non-essential businesses are closed to the public.

² And even Chicago Mayor Lori Lightfoot, a former federal prosecutor, recently stated that her police force would not enforce Pritzker’s impending mask requirement. *See*, <https://www.nbcchicago.com/news/local/what-to-know-about-the-new-mask-requirement-when-do-you-need-one-how-will-it-be-enforced/2261209/> (“Chicago Mayor Lori Lightfoot said she

6. At least one of these law enforcers cited as support a widely circulated and reported memo recently sent by the Chief Deputy Director of the Illinois Appellate Prosecutor's Office to the Director, for use in that Office's role as advisor to Illinois State's Attorneys, casting substantial doubt on the constitutionality of numerous provisions of Pritzker's executive orders. The Chief Deputy Director's memo specifically references the restrictions on religious activity therein, noting that "the EO is very broad and does not appear to meet strict scrutiny -- this is not to mention the EO appears to be beyond the framework of the specific Act it cites as support." *See*, <https://www.policeone.com/coronavirus-covid-19/articles/ill-chief-police-hold-no-interest-in-enforcing-stay-at-home-order-DNteArzdzYDmvGh2/> (citing Memo found at <https://edgarcountywatchdogs.com/wp-content/uploads/2020/04/COVID-19-Memo-4.21.20-003.pdf>).

7. On Tuesday, April 27, an Illinois Circuit Court agreed with this assessment and issued a temporary restraining order to a local state legislator against the current executive order. *See, Bailey v. Pritzker*, Clay Co. No. 20-CH-6. On Wednesday, April 28, another lawsuit was filed by a state legislator in Winnebago County Circuit Court, alleging Pritzker's orders exceeded his statutory and constitutional power. *See, Cabello v. Pritzker*, Winnebago Co. No. 2020-CH-210.

8. Despite the deep statewide concerns about the shaky legal foundations of his orders, Pritzker has not yielded to those concerns, but instead doubled down, announcing he will extend his orders to the end of May and beyond. Throughout, the Illinois State Police has threatened criminal enforcement of the orders statewide, even when local law enforcement decides not to do so. *See, e.g.*, <https://newschannel20.com/news/local/isp-clarifies-enforcement->

opposed making masks a requirement she doesn't plan on arresting or citing people who don't wear a mask")

of-stay-at-home-order (“While the goal is voluntary compliance, citizens should be aware that non-compliance with the Executive Order can result in criminal and civil sanctions,” said an Illinois State Police spokesperson.”) & <https://www.wglt.org/post/pekin-country-club-golf-course-closes-after-state-police-intervene#stream/0> (“Illinois State Police delivered a cease-and-desist letter to the private venue to force compliance with Gov. J.B. Pritzker's stay-at-home executive order. . . . Tazewell County Sheriff's Office had expressed ‘no issue’ with continued golfing at the Pekin Country Club”).

9. It has also been publicly reported that prominent government officials have violated Pritzker’s orders, without consequence. Mayor Lightfoot famously violated the orders and got a haircut, despite the hair stylists and barbers of the state being shut down, with no income and still being unable to access unemployment benefits nearly 6 weeks into the mandatory shutdown.³

10. Plaintiffs believe that, in these dark times, Illinoisans need the Spirit of Almighty God, but Pritzker’s orders have left them to settle for the lesser spirits dispensed out of the state’s liquor stores. The churches and pastors of Illinois are no less “essential” than its liquor stores to the health and well-being of its residents. Defendants have thus intentionally denigrated Illinois churches and pastors and people of faith by relegating them to second-class citizenship. Defendants have no compelling justification for their discriminatory treatment of churches and

³ The First Lady of Illinois has also been reported to be in residence at Pritzker’s vacation home in Florida, which would be a violation of Pritzker’s travel orders, if she did not leave before their effective date almost a month and a half ago. *See*, <https://ilrisingaction.org/first-lady-mk-pritzker-violates-stay-at-home-order-by-traveling-to-familys-florida-compound/> (citing <https://patch.com/illinois/chicago/does-all-illinois-slogan-apply-billionaire-govs-family>). Pritzker refused to answer questions related to the issue at his April 29 press conference. *See*, <https://twitter.com/MarkMaxwellTV/status/1255590975826808833>.

pastors and people of faith, nor have they attempted in any way to tailor their regulations to the least restrictive means necessary to meet any arguable compelling interest.

11. Plaintiffs intend to reopen and hold public worship services this Sunday, May 3. They justifiably fear arrest and prosecution if they do so, without immediate relief from this Court.

12. Plaintiffs seek temporary and permanent injunctive relief against Pritzker's orders shuttering their church, church ministries, and pastoral activities, as illegal and unconstitutional on their face and as applied to Plaintiffs.

II. Parties

13. The Beloved Church ("the Church") is an evangelical Christian church, organized as an Illinois not-for-profit corporation, located in the Village of Lena, Stephenson County, Illinois. Its principal asset is a church building located in the Village of Lena. The Church sues in its own capacity and on behalf of its congregants.

14. Plaintiff, Stephen Cassell, is pastor of the Church and a resident of Pearl City, Stephenson County, Illinois.

15. Defendant, Jay Robert Pritzker, is the governor of the state of Illinois.

16. Defendant, David Snyders, is the Sheriff of Stephenson County, Illinois, and has been serving in that office at all times relevant to this Complaint.

17. Defendant, Steve Schaible, is the Police Chief of the Village of Lena, in Stephenson County, Illinois, and has been serving in that office at all times relevant to this Complaint.

18. Defendant, Craig Beintema, is the Public Health Administrator of Stephenson County, Illinois, and has been serving in that office at all times relevant to this Complaint.

III. Venue

19. Plaintiffs and the local Defendants (Snyders, Schaible, and Beintema) are resident in the Northern District, Western Division. Many of the acts and omissions, and the effects of the acts and omissions, giving rise to this case occurred in Stephenson County, which is in the Northern District, Western Division. Venue is thus proper in this District under 28 U.S.C. § 1391.

IV. Jurisdiction

20. This court has jurisdiction over the federal claims asserted here under the federal question provision of the Judicial Code, 28 U.S.C. § 1331.

21. This court has jurisdiction over the claims asserting violations of the Illinois Constitution and Religious Freedom Restoration Act, 775 ILCS 35/1, *et seq.*, under the supplemental jurisdiction provision of the Judicial Code, 28 U.S.C. § 1367(a).

22. As alleged more fully below, all of Defendants' actions that have deprived Plaintiffs of rights under the U.S. Constitution have been taken under color of law.

23. This Court has the authority to grant the requested injunctive relief under 28 U.S.C. § 1343(3), declaratory relief under 28 U.S.C. §§ 2201 and 2202, the claim for damages under 42 U.S.C. § 1983, and to grant costs, including reasonable attorney's fees, under 42 U.S.C. § 1988 and 28 U.S.C. § 1920.

V. Facts

A. Plaintiffs Sincerely Believe, Teach, and Preach the Gospel of Jesus Christ

24. Pastor Cassell founded the Church on the truths of God's unconditional Love, amazing Grace and majestic Restoration available through the completed work of Jesus Christ. Plaintiffs hold firm to these life-changing foundations as they joyfully undertake their mission to the community.

25. Among other beliefs, Plaintiffs believe that the entire bible, Old and New Testaments, are a completed and infallible work called the Word of God. This work contains a completed revelation of God for mankind and the final authority for all Christian faith and practice. *See*, 2 Timothy 3:15-17, Psalms 19:7-11.

26. Plaintiffs are passionate to share the love of God with their congregants, who form what they believe is their Church family. Plaintiffs believe that through connecting with those in need, they can assist them in building a Godly and rock-solid foundation that cannot be shaken under any circumstance. To that end, Plaintiffs bring their understanding and personal experience with the issues and problems facing us all in today's world, including the coronavirus epidemic. Pastor Cassell lives, works, and ministers among and alongside his Church family. Plaintiffs are dedicated to being available to congregants and community members for counsel and assistance in any area of their lives. Plaintiffs believe there is no problem or situation too big or small for their gracious Savior to overcome.

27. From the time that he first founded the Church, Pastor Cassell has presided over Sunday religious services at the Church, as well as other religious services, to which all members of the Church are invited and strongly encouraged to attend. Those services have been held for the last five years in the Church's building in Lena, Illinois. Approximately 80 people attend Sunday services at the Church.

28. These weekly Sunday services include the proclamation of portions of scripture by Pastor Cassell to the assembled congregation; a message preached on the chosen scriptural passage by Pastor Cassell to the assembled congregation; oral, communal proclamation of prayers by both Pastor Cassell and the assembled congregation; and communal singing of praise and worship by Pastor Cassell and the assembled congregation.

29. During and after each Sunday service, the assembled members of the congregation are encouraged by Pastor Cassell to converse in, and on the grounds adjacent to, the church building to build fellowship and morale, individually and collectively, among congregation members so they may better perform the congregation's scripturally mandated evangelical function.

30. The assembly of members of the congregation at these Sunday services, the communal prayer and singing, the communal preaching and fellowship, and the informal conversation and fellowship among congregation members after the services are all essential parts of a functioning Christian congregation.

31. The weekly Sunday worship and prayer services are the central religious rites of the Church congregation. *See, e.g.*, James 5:14 ("Is any sick among you? Let him call for the elders of the church; and let them pray over him, anointing him with oil in the name of the Lord . . .") & Hebrews 10:24-25 ("And let us consider how we may spur one another on toward love and good deeds, not giving up meeting together, as some are in the habit of doing, but encouraging one another—and all the more as you see the Day approaching."). The congregation cannot truly "work from home," without forfeiting many of the great spiritual and religious benefits and comforts they receive from Plaintiffs.

32. From the time that he founded the Church, Pastor Cassell has also engaged in visits to and meetings with his congregants and community members for the purpose of prayer and spiritual counseling and support. *See, e.g.*, Matthew 18:20 ("For where two or three are gathered in my name, there am I in the midst of them."). In today's crisis, with many in Stephenson County and surrounding areas out of work or suffering other economic, psychological, or emotional distress, Pastor Cassell's spiritual visits and counseling are vitally necessary to the health and well-being of the community. For a father out of work, a young

person at risk for suicide, or a mom dealing with substance abuse, a “Zoom meeting” just doesn’t cut it.

33. Pastor Cassell’s organization of Sunday services, his role as senior pastor and preacher, and his prayer and spiritual counseling visits and meetings are central functions of his leadership of the Church. Pastor Cassell believes and teaches these functions are scripturally mandated for anyone claiming to hold the office of pastor of a Christian congregation. They are, therefore, religiously required for Pastor Cassell to perform.

B. Defendants Have Illegally Shuttered Illinois’ Churches By Declaring Them “Non-Essential” And Forbidden Residents From Leaving Their Homes For Church Or Religious Purposes.

34. On March 9, 2020, Defendant Pritzker declared the entire State of Illinois a “disaster area” due to the coronavirus epidemic and invoked his powers under the Illinois Emergency Management Agency Act (“IEMA Act”). (linked at <https://coronavirus.illinois.gov/s/resources-for-executive-orders>).

35. The IEMA Act, at 20 ILCS 3305/7, provides that, “In the event of a disaster, as defined in Section 4, the Governor may, by proclamation declare that a disaster exists. Upon such proclamation, the Governor shall have and may exercise for a period not to exceed 30 days the following emergency powers.” The Act defines “disaster” to mean “an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural or technological cause, including but not limited to . . . epidemic”

36. On April 2, 2020, Defendant Pritzker issued another proclamation in relation to the coronavirus epidemic purporting to extend his powers another 30 days under IEMA Act, and stating that, “I find that a continuing disaster exists This proclamation continues the Governor’s authority to exercise all of the emergency powers provided in” the Act. (linked at <https://coronavirus.illinois.gov/s/resources-for-executive-orders>).

37. On or about April 23, 2020, Defendant Pritzker stated his intent to issue another disaster proclamation in relation to the coronavirus epidemic purporting to extend his powers an additional 30 days.

38. Defendant Pritzker has issued a number of executive orders in relation to the coronavirus epidemic and purporting to exercise his authority under the IEMA Act, including his first “stay-at-home order” in Executive Order (“EO”) 2020-10, issued March 20, 2020, which is attached hereto as Exhibit A. He purported to extend that stay-at-home order, in relevant part, in EO 2020-18. On or about April 23, 2020, he stated his intent to extend that purported stay-at-home order until May 30, 2020. The intended new stay-at-home order released to the media by the Pritzker Administration, which is attached hereto as Exhibit B, adds dog grooming, golfing, and fishing to the list of “essentials.” (Found at <https://chicago.suntimes.com/2020/4/24/21235051/extended-say-at-home-order-illinois-full-text-pritzker-read-masks>). Under the new order, while congregants will be able to travel to take their pets for grooming, they will still be forbidden to travel for religious purposes and their churches will continue to be shut down as “non-essential,” until at least May 30.

39. EO 2020-10⁴ commands that, “With exceptions as outlined below, all individuals currently living within the State of Illinois are ordered to stay at home or at their place of residence except as allowed in this Executive Order....All persons may leave their homes or place of residence only for Essential Activities, Essential Governmental Functions, or to operate Essential Businesses and Operations, all as defined below.” Sec. 1, par. 1.

⁴ All citations are to EO 2020-10 as the model for the relevant executive orders. EO 2020-18 purported to extend 2020-10 until the end of April without changes. *See*, <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-18.aspx> (“Executive Order 2020-10 is continued and extended in its entirety for the duration of the Gubernatorial Disaster Proclamations, which currently extends through April 30, 2020.”) The upcoming announced EO inserts a new section 1 and moves the current section 1 into new EO section 2.

40. EO 2020-10 further prohibits “all public and private gatherings of any number of people outside a single household.” Sec. 1, par. 3.

41. EO 2020-10 sweeps within its ambit any “non-profit ... entities,” including the Church (and all Illinois churches), in its definition section, as follows: “**Businesses covered by this Executive Order.** For the purposes of this Executive Order, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function it performs, or its corporate or entity structure.” Sec. 1, par. 11.

42. EO 2020-10 separates all businesses into one of two categories, “essential” and “non-essential,” commanding that, “**Non-essential business and operations must cease.** All businesses and operations in the State, except Essential Businesses and Operations as defined below, are required to cease all activities within the State except Minimum Basic Operations, as defined below.” Sec. 1, par. 2.

43. EO 2020-10 expressly recognizes religious nonprofits and allows for them to operate as “essential businesses,” but only “when providing food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.” Sec. 1 par. 12(c).

44. Under a plain reading of EO 2020-10, the Church is subject to its regulations as a “business.” But Plaintiffs’ prayer and worship services, ministries, and pastoral and spiritual visits are entirely prohibited, insofar as they do not involve the provision of “food, shelter, and social services,” etc.⁵ Further, while the Church’s congregants may leave their homes for alleged

⁵ EO 2020-10 allows an exception for “non-essential businesses” to continue “Minimum Basic Operations,” which it defines as including in relevant part, “The minimum necessary activities to maintain the value of the business’s inventory, preserve the condition of the business’s physical plant and equipment, ensure security, process payroll and employee benefits, or for related

“essential” purposes, they and Pastor Cassell are barred from leaving their homes to attend the Church’s services and ministries.

45. Defendant Pritzker has further expressed official hostility to religious exercise, going so far as to reaffirm his ban on even drive-in parking lot church services. *See*, https://www.news-gazette.com/coronavirus/saturdays-coronavirus-updates-pritzker-cautions-against-easter-drive-in-services-3-new-cases-in-champaign/article_b02a195c-7c10-11ea-abff-0b35a3b4cc97.html (“On Easter eve, Gov. J.B. Pritzker cautioned against churches holding drive-in services in their parking lots.”). Local officials in Illinois have enforced Pritzker’s ban on drive-in church services. (*See, e.g.*, Peoria County (<https://www.centralillinoisproud.com/news/local-news/peoria-county-officers-break-up-parking-lot-church-service-remind-people-not-to-attend-religious-services-to-prevent-possible-covid-19-spread/>) & Sangamon County (<https://www.illinoistimes.com/springfield/going-to-church-or-pot/Content?oid=12070231>)).

46. Defendant Pritzker has repeatedly confirmed that criminal enforcement and penalties attach to violations of his orders. *See, e.g.*, <https://newschannel20.com/news/local/pritzker-police-can-charge-violators-of-stay-at-home-order> (“If they refuse and if they repeatedly refuse, there is the ability by the police officers to charge them with reckless conduct and take them into custody.”).

C. Defendants Forcibly Closed The Church And Threatened To Prosecute Pastor Cassell

47. On or about March 31, 2020, Defendant Beintema delivered a “Cease and Desist Notice” to Pastor Cassell, a true and accurate copy of which is attached hereto as Exhibit C.

functions.” Sec. 1, par. 13. Church prayer and worship services, pastoral ministries, and other church ministries do not fall within this exception.

48. On March 31, 2020, the “Cease and Desist Notice” was personally served on Pastor Cassell by deputies employed by Defendant Snyders’ office.

49. The Notice instructed Pastor Cassell that “your establishment, The Beloved Church, is required to adhere to [EO 2020-10].” And further that “[i]f you do not adhere to this Executive Order, the Illinois Department of Public Health has the authority to order that a place be closed and made off limits to the public.” It also stated, “[i]n addition to such order of closure issued ... you may be subject to additional civil and criminal penalties.” And “[f]urthermore, police officers, sheriffs and all other officers in Illinois are authorized to enforce such orders.” The Notice specifically states that “Essential Businesses and Operations have not been defined to include *religious gatherings* of 10 or more people” (emphasis supplied).

50. In view of this Notice and Pritzker’s orders, Plaintiffs have suspended all communal activities at the Church building, including the Sunday services. Plaintiffs justifiably fear arrest, prosecution, fines, and jail time if they open their church building or hold religious services of any kind.

D. Pritzker’s Orders Allow Gatherings At Liquor Stores And Other Businesses Deemed “Essential,” While Entirely Forbidding Church Worship And Religious Gatherings

51. Pritzker’s Executive Orders allow so-called “Essential” businesses to operate with no limit on the number of individuals gathered therein, while every religious gathering of any number is prohibited. See, EO 2020-10, *passim*.

52. For instance, based on personal observation, Pastor Cassell has observed that local Menards and Walmart stores in Stephenson County routinely assemble many more than 10 customers in their facilities. He has further observed that neither store requires those customers to observe 6-foot social distancing as required by Pritzker’s Executive Orders. Defendants, however, have not threatened those businesses with forcible closure or criminal prosecution.

53. Pastor Cassell observes that Snak King, one of the largest snack food manufacturers in the country, operates a plant in Stephenson County that routinely has dozens if not hundreds of persons on site.

54. Pastor Cassell observes that “mental health and substance use providers” remain open for in-person counseling and services, under the “Healthcare and Public Health Operations” section of EO 2020-10. Defendant Pritzker recognizes the benefit of providing mental health and substance abuse support services—as long as they are *not* provided by pastors and churches.

55. Pastor Cassell is also aware of liquor stores and all manner of other businesses being open to the public in his community. These alleged “Essential Businesses” operate, while his Church, which he had understood before this epidemic stood in high regard and enjoyed special protection under the United States and Illinois Constitutions, remains shuttered. Plaintiffs contend the notion of regulating churches as “businesses” is already insulting—going further and declaring churches to then be “non-essential businesses” reeks of rank bigotry. Without relief from this Court, the churches of this State will remain shuttered for an indefinite future, subject to the unchallenged, unexplained, and unreasonable whim of one man: Defendant Pritzker.

E. Pritzker Lacks Statutory Authority To Extend His Emergency Powers Past 30 Days And Issue EO 2020-18 And His Announced Upcoming Order

56. The express terms of the Emergency Management Agency Act, the authority Pritzker invoked as the basis for his authority to impose EO 2020-10 and to extend it as set forth in EO 2020-18, limit the duration of the Governor’s power to thirty days per disaster. The Act provides:

In the event of a disaster ... the Governor may, by proclamation declare that a disaster exists. Upon such proclamation, the Governor shall have and may exercise for a period not to exceed 30 days [his] ... emergency powers.

20 ILCS 3305/7.

57. On March 9, 2020, Defendant Pritzker first declared all counties in the State of Illinois as a disaster area due to the COVID-19 epidemic. Accordingly, his authority to invoke and exercise his emergency powers terminated on April 8, 2020. There is only one disaster: the current COVID-19 epidemic.

58. Pritzker promulgated EO 2020-10 on March 9, 2020 and its term explicitly extended only to April 7, 2020.

59. Notwithstanding the explicit statutory temporal limitation on his emergency powers imposed by the Emergency Management Agency Act, on April 1, 2020, Defendant Pritzker again declared all counties in the State of Illinois as a disaster area due to COVID-19. Based on the alleged authority deriving from that April 1, 2020 disaster proclamation, Defendant Pritzker, subsequently issued EO 2020-18, by which he purported to “continue” and “extend” EO 2020-10 through April 30, 2020.

60. Defendant Pritzker’s emergency powers, including the power to “extend and continue” EO 2020-10 for thirty (30) days, by issuing EO 2020-18, do not extend beyond the 30 days beginning with his original March 9, 2020 COVID-19 disaster proclamation.

61. Outside of the 30-day period in which the Governor may exercise emergency powers, the Department of Public Health “has general supervision of the interests of the health and lives of the people of the State. It has supreme authority in matters of quarantine and isolation.” 20 ILCS 2305/2(a). When it exercises that isolation authority to order the forcible closure of premises to the public, however, it must give the owners of such premises the right to insist on proof of the necessity for closure in a court of law within 48 hours. 20 ILCS 2305/2(c).

62. Because Defendant Pritzker has arrogated that authority to himself by an unlawful purported enlargement of his emergency powers, Plaintiffs have been deprived of the protection

of the mandated procedures and protections that must attend closure of private premises—including the right for prompt judicial review.

F. Pritzker Lacks Statutory Authority To Quarantine or Isolate Residents or To Shut Down Churches

63. Defendant Pritzker lacks authority under the IEMA Act to impose a quarantine or isolation on Illinois residents, or to order shutdowns of Illinois churches. The Illinois Department of Public Health Act (“IDPH Act”) provides that IDPH has “supreme authority in matters of quarantine and isolation.” 20 ILCS 2305/2(a).

64. IDPH alone may order quarantines and isolations of individuals or groups or closures of places, “to prevent the probable spread of a dangerously contagious or infectious disease.” 20 ILCS 2305/2(b).

65. The IDPH Act provides the exclusive remedy for quarantine and isolation and closures, along with ensuring the due process rights of those who are subject to such measures. See, 20 ILCS 2305/2(c) (“Except as provided in this Section, no person or a group of persons may be ordered to be quarantined or isolated and no place may be ordered to be closed and made off limits to the public except with the consent of the person or owner of the place or upon the prior order of a court of competent jurisdiction.”) & 77 Ill. Adm. Code 690.1330 (describing process for quarantine, isolation, and closure).

66. In shutting down Plaintiffs, Defendant Pritzker has not followed the strictures of the IDPH Act and the relevant sections of the Administrative Code. He has not provided Plaintiffs notice and a meaningful opportunity to be heard, nor any due process at all.

G. Pritzker’s Executive Orders Are Facially Unconstitutional In Violation Of The Constitutional Rights to Free Exercise of Religion, Free Speech, and Freedom of Assembly

67. EO 2020-10 and EO 2020-18, and the announced upcoming executive order, are facially unconstitutional because they discriminate against religious practice, speech and assembly, while giving favored status to numerous private businesses, including liquor stores, by designating them “Essential Businesses and Operations,” even though those favored businesses are certainly no more “essential” as evidenced by the protections afforded religious practice, speech and assembly by the First Amendment of the U.S. Constitution and sections 3, 4, and 5 of Article 1 of the Illinois Constitution, and pose an equivalent or even greater threat of the spread of COVID-19.

68. At least one other district court has protected religious exercise against another governor’s executive orders, recognizing that, “While these executive orders begin with a broad prohibition against mass gatherings, they proceed to carve out broad exemptions for a host of secular activities, many of which bear similarities to the sort of personal contact that will occur during in-person religious services. *Lukumi [Babalu Aye v. Hialeah]*, 508 U.S. 520 (1993)] indicates that a court should evaluate these exemptions in assessing a law’s neutrality.” *First Baptist Church v. Laura Kelly, Gov’r of Kansas*, No. 10-1102 (D. Kan., April 18, 2020) (A copy of the opinion is attached as Exhibit D.).

69. Moreover, the epidemic is in a much different place today than it was on March 9, 2020. At this point, it is widely reported that the coronavirus epidemic “curve” has been substantially “flattened” statewide. *See, e.g.,* <https://wgntv.com/news/coronavirus/over-2000-new-cases-of-covid-19-in-illinois-59-additional-deaths/> (“As infection rates seem to suggest a “flattening” of the coronavirus curve in Illinois, officials are scaling back the number of beds available at McCormick Place. Only 1,000 of the original 3,000 hospital beds at the alternate care facility will remain operational.”). With the temporary hospital at McCormick Place now being significantly scaled back, hospital and ICU capacity have clearly proven sufficient to meet

the coronavirus challenge. *See, e.g.*, <http://www.dph.illinois.gov/covid19/hospitalization-utilization>. “Flattening the curve” to preserve hospital capacity was the principal reason for Pritzker’s orders: that aim has now been achieved. *See, e.g.*, https://www.nbcchicago.com/news/local/pritzker-says-illinois-needs-38000-more-beds-for-covid-19/2243800/?_osource=SocialFlowTwt_CHBrand. Yet Pritzker’s orders as to churches and religious activities have not changed one iota from the early days of the coronavirus epidemic—when COVID-19 cases were growing exponentially, and policymakers feared millions would die—to today—when the level of coronavirus infections is stable. *See, e.g.*, rt.live (Illinois Rate of transmission, “Rt,” at .88, where “Values over 1.0 mean we should expect more cases in that area, values under 1.0 mean we should expect fewer.”).

70. There is no attempt at tailoring in the executive orders, much less narrow tailoring. Every church in the state has been shuttered, and every pastor and congregant placed under house arrest, save for “essential” non-religious activities. This has now gone on for almost a month and a half, with another month to come, and with no end in sight. No thought has been given to regional differences in these orders. No consideration has been made for church size. No allowance has been made in relation to particular individuals’ risk factors for coronavirus. No explanation has been offered to tie any spread of the coronavirus to a particular community. These orders cannot meet strict scrutiny.

H. Pritzker’s Executive Orders Are Unconstitutional As Applied to Plaintiffs

71. The executive orders are not narrowly tailored to the coronavirus situation in Stephenson County, Illinois. Numerous elected officials in Stephenson County, including the Mayor of Lena, Illinois, have begged Defendant Pritzker for localized relief from his orders, and they have expressed their readiness to address the issues presented by the coronavirus at the local level. *See, e.g.*, <https://cityoffreeport.org/press-release-city-and-stephenson-county-villages->

letter-to-gov-pritzker/ (“we strongly request that you allow each community or region, that knows their businesses, their people, and the COVID impact on their community to make the proper decisions on reopening businesses. . . . we feel that a one-size-fits-all set of restrictions isn’t feasible for the entire state of Illinois. Stephenson County is not Cook County, and quite frankly, counties like ours have a different culture that, by nature, normally utilizes social distancing.”) & <https://wrex.com/2020/04/28/stephenson-co-board-members-send-letter-to-pritzker-urging-different-approach-to-covid-19/> (“ . . . the current one-size-fits all top down authoritarian approach to combating this health crisis is unrealistic. We believe the protection of public health can occur simultaneously with the preservation of freedom and liberty by focusing on personal responsibility, and by also allowing local officials to address the problem at the local level.”). The people of Stephenson County deserve relief, and an executive order that responds to their particular spiritual needs.

72. Nor are Pritzker’s orders narrowly tailored to Plaintiffs, their 80-person Sunday services, or their pastoral activities, nor has any tailoring been attempted. Plaintiffs are fully willing to comply with proper constitutional guidelines, provided by government officials with authority to issue those guidelines. But they cannot abide an indefinite shut down of their church.

COUNT I
VIOLATIONS OF THE FIRST AND FOURTEENTH AMENDMENTS OF
THE U.S. CONSTITUTION – FREE EXERCISE
(42 U.S.C. § 1983)

73. Plaintiffs incorporate paragraphs 1 through 72.

74. Plaintiffs’ religious activities are protected by the Free Exercise Clause of the First Amendment of the Constitution of the United States. Those protections constrain Defendants through the Due Process Clause of the Fourteenth Amendment.

75. The actions of Defendants in threatening forcible closure, prosecution, and fine under the “Cease and Desist Notice”, EO 2020-10 and EO 2020-18, and the upcoming announced EO, interfere with Plaintiffs’ free exercise by prohibiting any religious activity in the church building and otherwise prohibiting and interfering with the Church’s religious practices.

76. The “Cease and Desist Notice”, EO 2020-10 and EO 2020-18, and the upcoming announced EO, interfere with Plaintiffs’ ability to carry out their religious doctrine, faith, and mission.

77. The “Cease and Desist Notice”, EO 2020-10 and EO 2020-18, and the upcoming announced EO, do not serve any compelling government interest, and are not narrowly tailored to accomplish any government interest, compelling or otherwise, in the least restrictive manner.

78. The “Cease and Desist Notice”, EO 2020-10 and EO 2020-18, and the upcoming announced EO, violate the Free Exercise Clause of the First Amendment on their face and as applied to Plaintiffs.

79. Plaintiffs are entitled to at least nominal damages for this infringement of their rights.

80. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined from implementing and enforcing the notice and orders.

81. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory relief and temporary, preliminary, and permanent injunctive relief invalidating and restraining enforcement of the notice and orders.

82. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys’ fees pursuant to 42 U.S.C. § 1988.

COUNT II
VIOLATIONS OF ARTICLE 1, SECTION 3 OF
THE ILLINOIS CONSTITUTION – FREE EXERCISE

83. Plaintiffs incorporate paragraphs 1 through 82.

84. Plaintiffs’ religious activities are protected by the Free Exercise Clause of Article 1 of the Illinois Constitution.

85. The actions of Defendants in threatening forcible closure, prosecution, and fine under the “Cease and Desist Notice”, EO 2020-10 and EO 2020-18, and the upcoming announced EO, interfere with Plaintiffs’ free exercise by prohibiting any religious activity in the church building and otherwise prohibiting and interfering with the Church’s religious practices.

86. The “Cease and Desist Notice” and EO 2020-10 and EO 2020-18, and the upcoming announced EO, interfere with Plaintiffs’ ability to carry out their religious doctrine, faith, and mission.

87. The “Cease and Desist Notice”, EO 2020-10 and EO 2020-18, and the upcoming announced EO do not serve any compelling government interest and are not narrowly tailored to accomplish any government interest, compelling or otherwise, in the least restrictive manner.

88. The “Cease and Desist Notice”, EO 2020-10 and EO 2020-18, and the upcoming announced EO, violate the Free Exercise Clause of the Illinois Constitution, on their face and as applied to Plaintiffs.

89. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined from implementing and enforcing the notice and orders.

COUNT III
VIOLATIONS OF THE FIRST AND FOURTEENTH AMENDMENTS OF
THE U.S. CONSTITUTION – FREE SPEECH
(42 U.S.C. § 1983)

90. Plaintiffs incorporate paragraphs 1 through 89.

91. Plaintiffs' rights to speak freely and peaceably assemble are protected by the Free Speech Clause of the First Amendment of the Constitution of the United States. Those protections constrain Defendants through the Due Process Clause of the Fourteenth Amendment.

92. The actions of Defendants in threatening forcible closure, prosecution, and fine under the "Cease and Desist Notice", EO 2020-10 and 2020-18 interfere with Plaintiffs' free speech by targeting and burdening their religious expression, including prohibiting any communal prayer and singing.

93. The "Cease and Desist Notice", EO 2020-10 and EO 2020-18, and the upcoming announced EO, do not serve any compelling government interest, and are not narrowly tailored to accomplish any government interest, compelling or otherwise, in the least restrictive manner. They are not reasonable time, place, or manner restrictions because they burden substantially more speech than necessary to achieve the government's interests and do not leave open ample alternative channels of communication.

94. The "Cease and Desist Notice", EO 2020-10 and EO 2020-18, and the upcoming announced EO, violate the Free Speech Clause of the First Amendment on their face and as applied to Plaintiffs.

95. Plaintiffs are entitled to at least nominal damages for this infringement of their rights.

96. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined from implementing and enforcing the notice and orders.

97. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory relief and temporary, preliminary, and permanent injunctive relief invalidating and restraining enforcement of the notice and orders.

98. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

COUNT IV
VIOLATIONS OF ARTICLE 1, SECTION 4 OF
THE ILLINOIS CONSTITUTION – FREE SPEECH

99. Plaintiffs incorporate paragraphs 1 through 98.

100. Plaintiffs' rights to speak freely are protected by the Free Speech clause of Article 1 of the Illinois Constitution.

101. The actions of Defendants in threatening forcible closure, prosecution, and fine under the "Cease and Desist Notice", EO 2020-10 and EO 2020-18, and the upcoming announced EO, interfere with Plaintiffs' free speech by targeting and burdening their religious expression, including prohibiting any communal prayer and singing.

102. The "Cease and Desist Notice", EO 2020-10 and EO 2020-18, and the upcoming announced EO, do not serve any compelling government interest, and are not narrowly tailored to accomplish any government interest, compelling or otherwise, in the least restrictive manner. They are not valid time, place, or manner restrictions on Plaintiffs' speech because they burden substantially more speech than necessary to achieve the government's interests and do not leave open ample alternative channels of communication.

103. The "Cease and Desist Notice", EO 2020-10 and EO 2020-18, and the upcoming announced EO, violate the Free Speech Clause of the Illinois Constitution both on their face and as applied to Plaintiffs.

104. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined from implementing and enforcing the notice and orders.

COUNT V
VIOLATIONS OF THE FIRST AND FOURTEENTH AMENDMENTS OF
THE U.S. CONSTITUTION – FREEDOM TO ASSEMBLE
(42 U.S.C. § 1983)

105. Plaintiffs incorporate paragraphs 1 through 104.

106. Plaintiffs’ rights to peaceably assemble are protected by the First Amendment of the Constitution of the United States. Those protections constrain Defendants through the Due Process Clause of the Fourteenth Amendment.

107. The actions of Defendants in threatening forcible closure, prosecution, and fine under the “Cease and Desist Notice”, EO 2020-10 and EO 2020-18, and the upcoming announced EO, interfere with Plaintiffs’ freedom to assemble by prohibiting any communal activity in the church building.

108. The “Cease and Desist Notice”, EO 2020-10 and EO 2020-18, and the upcoming announced EO, do not serve any compelling government interest, and are not narrowly tailored to accomplish any government interest, compelling or otherwise, in the least restrictive manner. They also are not reasonable time, place, and manner restrictions because they burden substantially more speech than necessary to achieve the government’s interests and do not leave open ample alternative channels of communication.

109. The “Cease and Desist Notice”, EO 2020-10 and EO 2020-18, and the upcoming announced EO, violate the freedom to peaceably assemble protected by the First Amendment both on their face and as applied to Plaintiffs.

110. Plaintiffs are entitled to at least nominal damages for this infringement of their rights.

111. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined from implementing and enforcing the notice and orders.

112. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory relief and temporary, preliminary, and permanent injunctive relief invalidating and restraining enforcement of the notice and orders.

113. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

COUNT VI
VIOLATIONS OF ARTICLE 1., SECTION 5 OF
THE ILLINOIS CONSTITUTION – FREEDOM TO ASSEMBLE

114. Plaintiffs incorporate paragraphs 1 through 113.

115. Plaintiffs' rights to peaceably assemble are protected by the Freedom to Assemble clause of Article 1. of the Illinois Constitution.

116. The actions of Defendants in threatening forcible closure, prosecution, and fine under the "Cease and Desist Notice", EO 2020-10 and EO 2020-18, and the upcoming announced EO, interfere with Plaintiffs' freedom to peaceably assemble by prohibiting any communal activity in the church building.

117. The "Cease and Desist Notice", EO 2020-10 and EO 2020-18, and the upcoming announced EO, do not serve any compelling government interest, and are not narrowly tailored to accomplish any government interest, compelling or otherwise, in the least restrictive manner. They also are not reasonable time, place, and manner restrictions because they burden

substantially more speech than necessary to achieve the government's interests and do not leave open ample alternative channels of communication.

118. The "Cease and Desist Notice", EO 2020-10 and EO 2020-18, and the upcoming announced EO, violate the Freedom to Assemble Clause of the Illinois Constitution both on their face and as applied to the Plaintiffs.

119. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined from implementing and enforcing the notice and orders.

COUNT VII
VIOLATIONS OF THE DUE PROCESS CLAUSE OF THE
FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION
(42 U.S.C. § 1983)

120. Plaintiffs incorporate paragraphs 1 through 119.

121. EO 2020-10 and EO 2020-18, and the upcoming announced EO, and Defendants' enforcement thereof violate Plaintiffs' substantive due process rights secured by the Fourteenth Amendment to the U.S. Constitution. Under the Due Process Clause of the Fourteenth Amendment, no State shall "deprive any person of life, liberty, or property, without due process of law." The fundamental liberties protected by this Clause include most of the rights enumerated in the Bill of Rights. *See, Duncan v. Louisiana*, 391 U.S. 145, 147–149 (1968). In addition, these liberties extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs. *See, e.g., Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972); *Griswold v. Connecticut*, 381 U.S. 479, 484–486 (1965).

122. Plaintiffs’ rights to freedom of religion, assembly, speech, and travel are fundamental rights protected by the U.S. Constitution. *See, e.g., Aptheker v. Secretary of State*, 378 U.S. 500, 520 (1964); *Kent v. Dulles*, 357 U.S. 116, 127 (1958).

123. When a government practice restricts fundamental rights such as the right to practice religion freely, assemble peacefully, speak, and travel, it is subject to “strict scrutiny” and can be justified only if it furthers a compelling government purpose, and, even then, only if no less restrictive alternative is available. *See, e.g. Memorial Hospital v. Maricopa County*, 415 U.S. 250, 257-258 (1974); *Dunn v. Blumstein*, 405 U.S. 330, 339-341 (1972); *Shapiro v. Thompson*, 394 U.S. 618, 89 (1969), *Maher v. Roe*, 432 U.S. 464, 488 (1977). The Due Process Clause of the Fourteenth Amendment includes the right to be free from any purported normative, legal guidelines bestowing unfettered discretion on government officials about interpretation or enforcement.

124. Strict scrutiny applies to Plaintiffs’ claims because the EO 2020-10 and EO 2020-18, and the upcoming announced EO, mandate that Plaintiffs stay at home, impinging on their fundamental rights to freedom of religion, assembly, speech, and travel. These orders do not permit Plaintiffs to exercise these rights, unless Defendants deem them “essential” or as participating in “essential” activities.

125. Defendants’ mandates are not “narrowly tailored” to further any compelling governmental interest. Defendants’ have granted numerous exemptions for purportedly “essential” businesses and activities. Since these gatherings can be permitted, there can be no doubt that Defendants may, and therefore must, permit Plaintiffs to engage in equivalent constitutionally protected activities on the same or similar terms.

126. Plaintiffs are entitled to at least nominal damages for this infringement of their rights.

127. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined from implementing and enforcing the notice and orders.

128. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory relief and temporary, preliminary, and permanent injunctive relief invalidating and restraining enforcement of the notice and orders.

129. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

COUNT VIII
ILLINOIS RELIGIOUS FREEDOM RESTORATION ACT (775 ILCS 35)

130. Plaintiffs incorporate paragraphs 1 through 129.

131. Illinois' Religious Freedom Restoration Act ("RFRA") commands that Illinois government "may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless it demonstrates that application of the burden to the person (i) is in furtherance of a compelling governmental interest and (ii) is the least restrictive means of furthering that compelling governmental interest." 775 ILCS 35/15.

132. Defendants, who are agents of Illinois government and therefore subject to the RFRA, have violated RFRA by substantially burdening Plaintiffs' exercise of their religion without any valid justification.

133. Defendants' "Cease and Desist Notice", EO 2020-10 and EO 2020-18, and the upcoming announced EO, do not further a compelling governmental interest, and are not the least restrictive means of furthering any governmental interest, compelling or otherwise.

134. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined from implementing and enforcing the orders.

135. Pursuant to 775 ILCS 35/20, Plaintiffs are entitled to declaratory relief and temporary, preliminary, and permanent injunctive relief invalidating and restraining enforcement of the notice and orders.

136. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees pursuant to 775 ILCS 35/20.

COUNT IX
DECLARATORY JUDGMENT (28 USC § 2201)

137. Plaintiffs incorporate paragraphs 1 through 136.

138. As set forth herein, Defendants have and continue to and will enforce against Plaintiffs the provisions of EO 2020-10 and EO 2020-18, and the upcoming announced EO;

139. An actual controversy exists between Plaintiffs and Defendants as to whether Defendant Pritzker possesses the power and authority to issue EO 2020-18, by which he purported to extend the prohibitions set forth in EO 2020-10 through April 30, 2020.

140. An actual controversy exists between Plaintiffs and Defendants as to whether Defendant Pritzker possesses the power and authority to issue an executive order providing for any additional extension of the prohibitions set forth in EO 2020-10 and EO 2020-18 as he has publicly announced he intends to do.

141. An actual controversy exists between Plaintiffs and Defendants whether Defendant Pritzker possesses the power and authority to impose under the IEMA Act to impose a quarantine or isolation on Illinois residents, or to order shutdowns of Illinois churches, without

following the strictures of the IDPH Act and allowing residents and churches the due process provided them under the IDPH Act and related administrative rules.

142. Plaintiffs seek a declaration that Pritzker was without the power or authority to issue EO 2020-18, by which Defendant Pritzker purported to extend the prohibitions set forth in EO 2020-10 through April 30, 2020; that he is without the power or authority to issue any additional extension of the prohibitions set forth in EO 2020-18 and EO 2020-18 as he has publicly announced he intends to do; and that he is without the power or authority to quarantine or isolate Illinois residents or order shutdowns of Illinois churches, without following the strictures of the IDPH Act and allowing residents and churches the due process provided them under the IDPH Act and related administrative rules.

WHEREFORE, under Counts I through VIII, Plaintiffs, Stephen Cassell and The Beloved Church, pray for judgment in their favor against Defendants and ask that the Court grant:

- A. A temporary restraining order restraining Defendants from preventing or interfering with communal religious activities at the Lena church building and the pastoral activities of Plaintiffs wherever they occur;
- B. A preliminary injunction restraining Defendants from preventing or interfering with communal religious activities at the Lena church building and the pastoral activities of Plaintiffs wherever they occur;
- C. A permanent injunction restraining Defendants from preventing or interfering with communal religious activities at the Lena church building and the pastoral activities of Plaintiffs wherever they occur;
- D. A declaration that the “Cease and Desist Notice”, EO 2020-10 and EO 2020-18, and the upcoming announced EO, are illegal and unconstitutional facially and as applied to Plaintiffs;

- E. An award of nominal and actual damages against each of the Defendants;
- F. An award of costs and reasonable attorneys' fees incurred in the prosecution of this action; and,
- G. Any other relief the Court deems just and proper.

Under Count IX, Plaintiffs, Stephen Cassell and The Beloved Church pray for judgment in their favor against all Defendants and ask that the Court grant:

- A. A declaration that Defendant Pritzker was without the power or authority to issue EO 2020-18, by which Defendant Pritzker purported to extend the prohibitions set forth in EO 2020-10 through April 30, 2020;
- B. A declaration that Defendant Pritzker is without the power or authority to exercise his emergency powers beyond the 30 days permitted by the express terms of the Illinois Emergency Management Agency Act, including his announced but as yet unissued new COVID-19 executive order;
- C. A declaration that Defendant Pritzker is without the power or authority to quarantine or isolate Illinois residents or order shutdowns of Illinois churches, without following the strictures of the IDPH Act and allowing residents and churches the due process provided them under the IDPH Act and related administrative rules;
- D. A temporary restraining order restraining Defendants from seeking to enforce EO 2020-18 or any executive order or action undertaken by Defendant Pritzker by which he purports to further extend the prohibitions set forth in EO 2020-10 and EO 2020-18;
- E. A preliminary injunction further restraining Defendants from seeking to enforce EO 2020-18 or any executive order or action undertaken by Defendant Pritzker by

which he purports to further extend the prohibitions set forth in EO 2020-10 and EO 2020-18;

F. A permanent injunction restraining Defendants from seeking to enforce EO 2020-18 or any executive order or action undertaken by Defendant Pritzker by which he purports to further extend the prohibitions set forth in EO 2020-10 and EO 2020-18; and,

G. For such further relief as the Court may deem just and proper.

/s/ Martin Whittaker

/s/Peter Breen

Peter Breen

Thomas Brejcha

Martin Whittaker

THE THOMAS MORE SOCIETY

309 West Washington, Suite 1250

Chicago IL 60606

312 782 1680

pbreen@thomasmoresociety.org

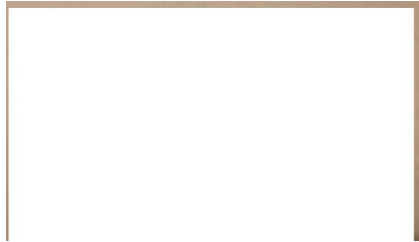
tbrejcha@thomasmoresociety.org

mwhittaker@thomasmoresociety.org

Attorneys for Plaintiffs

Verification

I, Stephen Cassell, declare that I have personal knowledge of the factual matters set out in this Complaint and declare under penalty of perjury that the foregoing is true and correct. Executed on April 30, 2020.



Stephen Cassell

Exhibit A – Executive Order 2020-10

⊕ View up to date information on how Illinois is handling the Coronavirus Disease 2019 (COVID-19) from the State of Illinois Coronavirus Response Site (<https://coronavirus.illinois.gov/>)

Illinois.gov (/)

Executive Order 2020-10

March 20, 2020

EXECUTIVE ORDER 2020-10

EXECUTIVE ORDER IN RESPONSE TO COVID-19 (COVID-19 EXECUTIVE ORDER NO. 8)

WHEREAS, I, JB Pritzker, Governor of Illinois, declared all counties in the State of Illinois as a disaster area on March 9, 2020 (Gubernatorial Disaster Proclamation) in response to the outbreak of Coronavirus Disease 2019 (COVID-19 (Coronavirus Disease 2019)); and,

WHEREAS, in a short period of time, COVID-19 (Coronavirus Disease 2019) has rapidly spread throughout Illinois, necessitating updated and more stringent guidance from federal, state, and local public health officials; and,

WHEREAS, for the preservation of public health and safety throughout the entire State of Illinois, and to ensure that our healthcare delivery system is capable of serving those who are sick, I find it necessary to take additional measures consistent with public health guidance to slow and stop the spread of COVID-19 (Coronavirus Disease 2019);

WHEREAS, COVID-19 (Coronavirus Disease 2019) has resulted in significant economic impact, including loss of income and wages, that threaten to undermine housing security and stability;

WHEREAS, the enforcement of eviction orders for residential premises is contrary to the interest of preserving public health and ensuring that individuals remain in their homes during this public health emergency;

THEREFORE, by the powers vested in me as the Governor of the State of Illinois, and pursuant to Sections 7(1), 7(2), 7(8), 7(10), and 7(12) of the Illinois Emergency Management Agency Act, 20 ILCS (Illinois Compiled Statutes) 3305, and consistent with the powers in public health laws, I hereby order the following, effective March 21, 2020 at 5:00 pm and for the remainder of the duration of the Gubernatorial Disaster Proclamation, which currently extends through April 7, 2020:

Section 1. Stay at Home; Social Distancing Requirements; and Essential Businesses and Operations

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

Individuals experiencing homelessness are exempt from this directive, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to make such shelter available as soon as possible and to the maximum extent practicable (and to use in their operation COVID-19 (Coronavirus Disease 2019) risk mitigation practices recommended by the U.S. Centers for Disease Control and Prevention (CDC (Centers for Disease Control and Prevention))) and the Illinois Department of Public Health (IDPH (Illinois Department of Public Health))). Individuals whose residences are unsafe or become unsafe, such as victims of domestic violence, are permitted and urged to leave their home and stay at a safe alternative location. For purposes of this Executive Order, homes or residences include hotels, motels, shared rental units, shelters, and similar facilities.

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

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

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

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

This Executive Order supersedes Section 2 of Executive Order 2020-07 (COVID-19 (Coronavirus Disease 2019) Executive Order No. 5), which prohibited gatherings of 50 people or more.

4. **Prohibited and permitted travel.** All travel, including, but not limited to, travel by automobile, motorcycle, scooter, bicycle, train, plane, or public transit, except Essential Travel and Essential Activities as defined herein, is prohibited. People riding on public transit must comply with Social Distancing Requirements to the greatest extent feasible. This Executive Order allows travel into or out of the State to maintain Essential Businesses and Operations and Minimum Basic Operations.
5. **Leaving the home for essential activities is permitted.** For purposes of this Executive Order, individuals may leave their residence only to perform any of the following Essential Activities:
- a. For health and safety. To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (including, but not limited to, pets), such as, by way of example only and without limitation, seeking emergency services, obtaining medical supplies or medication, or visiting a health care professional.
 - b. For necessary supplies and services. To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, groceries and food, household consumer products, supplies they need to work from home, and products necessary to maintain the safety, sanitation, and essential operation of residences.
 - c. For outdoor activity. To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements, as defined below, such as, by way of example and without limitation, walking, hiking, running, or biking. Individuals may go to public parks and open outdoor recreation areas. However, playgrounds may increase spread of COVID-19 (Coronavirus Disease 2019), and therefore shall be closed.
 - d. For certain types of work. To perform work providing essential products and services at Essential Businesses or Operations (which, as defined below, includes Healthcare and Public Health Operations, Human Services Operations, Essential Governmental Functions, and Essential Infrastructure) or to otherwise carry out activities specifically permitted in this Executive Order, including Minimum Basic Operations.
 - e. To take care of others. To care for a family member, friend, or pet in another household, and to transport family members, friends, or pets as allowed by this Executive Order.
6. **Elderly people and those who are vulnerable as a result of illness should take additional precautions.** People at high risk of severe illness from COVID-19 (Coronavirus Disease 2019), including elderly people and those who are sick, are urged to stay in their residence to the extent possible except as necessary to seek medical care. Nothing in this Executive Order prevents the Illinois Department of Public Health or local public health departments from issuing and enforcing isolation and quarantine orders pursuant to the Department of Public Health Act, 20 ILCS (Illinois Compiled Statutes) 2305.
7. **Healthcare and Public Health Operations.** For purposes of this Executive Order, individuals may leave their residence to work for or obtain services through Healthcare and Public Health Operations.
- Healthcare and Public Health Operations includes, but is not limited to: hospitals; clinics; dental offices; pharmacies; public health entities, including those that compile, model, analyze

and communicate public health information; pharmaceutical, pharmacy, medical device and equipment, and biotechnology companies (including operations, research and development, manufacture, and supply chain); organizations collecting blood, platelets, plasma, and other necessary materials; licensed medical cannabis dispensaries and licensed cannabis cultivation centers; reproductive health care providers; eye care centers, including those that sell glasses and contact lenses; home healthcare services providers; mental health and substance use providers; other healthcare facilities and suppliers and providers of any related and/or ancillary healthcare services; and entities that transport and dispose of medical materials and remains. Specifically included in Healthcare and Public Health Operations are manufacturers, technicians, logistics, and warehouse operators and distributors of medical equipment, personal protective equipment (PPE), medical gases, pharmaceuticals, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, and tissue and paper towel products.

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

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

8. **Human Services Operations.** For purposes of this Executive Order, individuals may leave their residence to work for or obtain services at any Human Services Operations, including any provider funded by the Illinois Department of Human Services, Illinois Department of Children and Family Services, or Medicaid that is providing services to the public and including state-operated, institutional, or community-based settings providing human services to the public. Human Services Operations includes, but is not limited to: long-term care facilities; all entities licensed pursuant to the Child Care Act, 225 ILCS (Illinois Compiled Statutes) 10, except for day care centers, day care homes, group day care homes, and day care centers licensed as specified in Section 12(s) of this Executive Order; residential settings and shelters for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness; transitional facilities; home-based settings to provide services to individuals with physical, intellectual, and/or developmental disabilities, seniors, adults, and children; field offices that provide and help to determine eligibility for basic needs including food, cash assistance, medical coverage, child care, vocational services, rehabilitation services; developmental centers; adoption agencies; businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged individuals, individuals with physical, intellectual, and/or developmental disabilities, or otherwise needy individuals.

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

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

Essential Infrastructure includes, but is not limited to: food production, distribution, and sale; construction (including, but not limited to, construction required in response to this public

health emergency, hospital construction, construction of long-term care facilities, public works construction, and housing construction); building management and maintenance; airport operations; operation and maintenance of utilities, including water, sewer, and gas; electrical (including power generation, distribution, and production of raw materials); distribution centers; oil and biofuel refining; roads, highways, railroads, and public transportation; ports; cybersecurity operations; flood control; solid waste and recycling collection and removal; and internet, video, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services).

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

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

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

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

11. **Businesses covered by this Executive Order.** For the purposes of this Executive Order, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function it performs, or its corporate or entity structure.
12. **Essential Businesses and Operations.** For the purposes of this Executive Order, Essential Businesses and Operations means Healthcare and Public Health Operations, Human Services Operations, Essential Governmental Functions, and Essential Infrastructure, and the following:
- a. Stores that sell groceries and medicine. Grocery stores, pharmacies, certified farmers' markets, farm and produce stands, supermarkets, convenience stores, and other establishments engaged in the retail sale of groceries, canned food, dry goods, frozen foods, fresh fruits and vegetables, pet supplies, fresh meats, fish, and poultry, alcoholic and non-alcoholic beverages, and any other household consumer products (such as cleaning and personal care products). This includes stores that sell groceries, medicine, including medication not requiring a medical prescription, and also that sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences and Essential Businesses and Operations;
 - b. Food, beverage, and cannabis production and agriculture. Food and beverage manufacturing, production, processing, and cultivation, including farming, livestock, fishing, baking, and other production agriculture, including cultivation, marketing,

- production, and distribution of animals and goods for consumption; licensed medical and adult use cannabis dispensaries and licensed cannabis cultivation centers; and businesses that provide food, shelter, and other necessities of life for animals, including animal shelters, rescues, shelters, kennels, and adoption facilities;
- c. Organizations that provide charitable and social services. Businesses and religious and secular nonprofit organizations, including food banks, when providing food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities;
 - d. Media. Newspapers, television, radio, and other media services;
 - e. Gas stations and businesses needed for transportation. Gas stations and auto-supply, auto-repair, and related facilities and bicycle shops and related facilities;
 - f. Financial institutions. Banks, currency exchanges, consumer lenders, including but not limited, to payday lenders, pawnbrokers, consumer installment lenders and sales finance lenders, credit unions, appraisers, title companies, financial markets, trading and futures exchanges, affiliates of financial institutions, entities that issue bonds, related financial institutions, and institutions selling financial products;
 - g. Hardware and supply stores. Hardware stores and businesses that sell electrical, plumbing, and heating material;
 - h. Critical trades. Building and Construction Tradesmen and Tradeswomen, and other trades including but not limited to plumbers, electricians, exterminators, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, HVAC, painting, moving and relocation services, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses and Operations;
 - i. Mail, post, shipping, logistics, delivery, and pick-up services. Post offices and other businesses that provide shipping and delivery services, and businesses that ship or deliver groceries, food, alcoholic and non-alcoholic beverages, goods or services to end users or through commercial channels;
 - j. Educational institutions. Educational institutions—including public and private pre-K-12 schools, colleges, and universities—for purposes of facilitating distance learning, performing critical research, or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible. This Executive Order is consistent with and does not amend or supersede Executive Order 2020-05 (COVID-19 (Coronavirus Disease 2019) Executive Order No. 3) or Executive Order 2020-06 (COVID-19 (Coronavirus Disease 2019) Executive Order No. 4) except that affected schools are ordered closed through April 7, 2020;
 - k. Laundry services. Laundromats, dry cleaners, industrial laundry services, and laundry service providers;
 - l. Restaurants for consumption off-premises. Restaurants and other facilities that prepare and serve food, but only for consumption off-premises, through such means as in-house delivery, third-party delivery, drive-through, curbside pick-up, and carry-out. Schools and other entities that typically provide food services to students or members of the public

may continue to do so under this Executive Order on the condition that the food is provided to students or members of the public on a pick-up and takeaway basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site due to the virus's propensity to physically impact surfaces and personal property. This Executive Order is consistent with and does not amend or supersede Section 1 of Executive Order 2020-07 (COVID-19 (Coronavirus Disease 2019) Executive Order No. 5) except that Section 1 is ordered to be extended through April 7, 2020;

- m. Supplies to work from home. Businesses that sell, manufacture, or supply products needed for people to work from home;
- n. Supplies for Essential Businesses and Operations. Businesses that sell, manufacture, or supply other Essential Businesses and Operations with the support or materials necessary to operate, including computers, audio and video electronics, household appliances; IT and telecommunication equipment; hardware, paint, flat glass; electrical, plumbing and heating material; sanitary equipment; personal hygiene products; food, food additives, ingredients and components; medical and orthopedic equipment; optics and photography equipment; diagnostics, food and beverages, chemicals, soaps and detergent; and firearm and ammunition suppliers and retailers for purposes of safety and security;
- o. Transportation. Airlines, taxis, transportation network providers (such as Uber and Lyft), vehicle rental services, paratransit, and other private, public, and commercial transportation and logistics providers necessary for Essential Activities and other purposes expressly authorized in this Executive Order;
- p. Home-based care and services. Home-based care for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness, including caregivers such as nannies who may travel to the child's home to provide care, and other in-home services including meal delivery;
- q. Residential facilities and shelters. Residential facilities and shelters for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness;
- r. Professional services. Professional services, such as legal services, accounting services, insurance services, real estate services (including appraisal and title services);
- s. Day care centers for employees exempted by this Executive Order. Day care centers granted an emergency license pursuant to Title 89, Section 407.400 of the Illinois Administrative Code, governing Emergency Day Care Programs for children of employees exempted by this Executive Order to work as permitted. The licensing requirements for day care homes pursuant to Section 4 of the Child Care Act, 225 ILCS (Illinois Compiled Statutes) 10/4, are hereby suspended for family homes that receive up to 6 children for the duration of the Gubernatorial Disaster Proclamation.
- t. Manufacture, distribution, and supply chain for critical products and industries. Manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as pharmaceutical, technology, biotechnology, healthcare, chemicals and sanitization, waste pickup and disposal, agriculture, food and beverage, transportation, energy, steel and steel products,

petroleum and fuel, mining, construction, national defense, communications, as well as products used by other Essential Businesses and Operations.

- u. Critical labor union functions. Labor Union essential activities including the administration of health and welfare funds and personnel checking on the well-being and safety of members providing services in Essential Businesses and Operations – provided that these checks should be done by telephone or remotely where possible.
- v. Hotels and motels. Hotels and motels, to the extent used for lodging and delivery or carry-out food services.
- w. Funeral services. Funeral, mortuary, cremation, burial, cemetery, and related services.

13. **Minimum Basic Operations.** For the purposes of this Executive Order, Minimum Basic Operations include the following, provided that employees comply with Social Distancing Requirements, to the extent possible, while carrying out such operations:

- a. The minimum necessary activities to maintain the value of the business's inventory, preserve the condition of the business's physical plant and equipment, ensure security, process payroll and employee benefits, or for related functions.
- b. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.

14. **Essential Travel.** For the purposes of this Executive Order, Essential Travel includes travel for any of the following purposes. Individuals engaged in any Essential Travel must comply with all Social Distancing Requirements as defined in this Section.

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

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

- a. Required measures. Essential Businesses and Operations and businesses engaged in Minimum Basic Operations must take proactive measures to ensure compliance with Social Distancing Requirements, including where possible:
 - i. Designate six-foot distances. Designating with signage, tape, or by other means six-foot spacing for employees and customers in line to maintain appropriate distance;

- ii. Hand sanitizer and sanitizing products. Having hand sanitizer and sanitizing products readily available for employees and customers;
 - iii. Separate operating hours for vulnerable populations. Implementing separate operating hours for elderly and vulnerable customers; and
 - iv. Online and remote access. Posting online whether a facility is open and how best to reach the facility and continue services by phone or remotely.
16. **Intent of this Executive Order.** The intent of this Executive Order is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 (Coronavirus Disease 2019) to the greatest extent possible. When people need to leave their places of residence, whether to perform Essential Activities, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times and as much as reasonably possible comply with Social Distancing Requirements. All provisions of this Executive Order should be interpreted to effectuate this intent.
17. **Enforcement.** This Executive Order may be enforced by State and local law enforcement pursuant to, inter alia, Section 7, Section 18, and Section 19 of the Illinois Emergency Management Agency Act, 20 IL CS (Illinois Compiled Statutes) 3305.
18. **No limitation on authority.** Nothing in this Executive Order shall, in any way, alter or modify any existing legal authority allowing the State or any county, or local government body from ordering (1) any quarantine or isolation that may require an individual to remain inside a particular residential property or medical facility for a limited period of time, including the duration of this public health emergency, or (2) any closer of a specific location for a limited period of time, including the duration of this public health emergency. Nothing in this Executive Order shall, in any way, alter or modify any existing legal authority allowing a county or local government body to enact provisions that are stricter than those in this Executive Order.

Section 2. Order ceasing evictions.

Pursuant to the Illinois Emergency Management Agency Act, 20 IL CS (Illinois Compiled Statutes) 3305/7(2), (8), and (10), all state, county, and local law enforcement officers in the State of Illinois are instructed to cease enforcement of orders of eviction for residential premises for the duration of the Gubernatorial Disaster Proclamation. No provision contained in this Executive Order shall be construed as relieving any individual of the obligation to pay rent, to make mortgage payments, or to comply with any other obligation that an individual may have under tenancy or mortgage.

Section 3. Savings clause.

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

Issued by the Governor March 20, 2020

Filed by the Secretary of State March 20, 2020

Exhibit B – Announced Upcoming Executive Order

April 30, 2020

Executive Order 2020-XX

EXECUTIVE ORDER IN RESPONSE TO COVID-19
(COVID-19 EXECUTIVE ORDER NO. XX)¹

WHEREAS, Coronavirus 2019 (COVID-19) is a novel severe acute respiratory illness that can spread among people through respiratory transmissions and present with symptoms similar to those of influenza; and,

WHEREAS, on March 11, 2020, the World Health Organization characterized the COVID-19 outbreak as a pandemic; and,

WHEREAS, despite efforts to contain COVID-19, the World Health Organization (WHO) and the federal Centers for Disease Control and Prevention (CDC) have declared that it is expected to continue spreading; and,

WHEREAS, certain populations are at higher risk of experiencing more severe illness as a result of COVID-19, including older adults and people who have serious chronic medical conditions such as heart disease, diabetes, or lung disease; and,

WHEREAS, in a short period of time, COVID-19 has rapidly spread throughout Illinois, necessitating updated and more stringent guidance from federal, state, and local public health officials; and,

WHEREAS, social distancing, which requires maintaining at least a six-foot distance between people, continues to be a paramount strategy for minimizing the spread of COVID-19 in our communities; and,

WHEREAS, current testing availability has identified further spread of confirmed cases throughout the State of Illinois, and it is expected that increased testing capacity would demonstrate that COVID-19 is circulating in communities across Illinois that currently have not identified a confirmed case; and,

WHEREAS, until testing and contact tracing become more widespread, it is critical to minimize the potential exposure of Illinoisans to COVID-19; and,

WHEREAS, the number of suspected COVID-19 cases in Illinois is increasing exponentially and across more locations in Illinois, indicating that drastic social distancing measures are needed, even in communities where confirmed cases have not yet been identified, to reduce the number of people who become sick at any given time and the possibility of exhausting our health care resources; and,

¹ This Executive Order will be filed on April 30, 2020. This pre-filing copy is being provided to media and the public in order to inform the public about the changes to expect as of May 1, 2020. The underlining and strike outs identify the changes to the current Executive Order.

WHEREAS, the CDC now recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain in order to slow the spread of the virus and help people who may have the virus and do not know it from transmitting it to others; and,

WHEREAS, I, JB Pritzker, Governor of Illinois, declared all counties in the State of Illinois as a disaster area on March 9, 2020 (the First Gubernatorial Disaster Proclamation) in response to the outbreak of COVID-19; and,

WHEREAS, I again declared all counties in the State of Illinois as a disaster area on April 1, 2020 (the Second Gubernatorial Disaster Proclamation) in response to the exponential spread of COVID-19; and,

WHEREAS, I again declared all counties in the State of Illinois as a disaster area on April XX, 2020 (the Third Gubernatorial Disaster Proclamation, and, together with the First Gubernatorial Disaster Proclamation and the Second Gubernatorial Disaster Proclamation, the Gubernatorial Disaster Proclamations) in response to the exponential spread of COVID-19; and,

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

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

The Stay at Home Order (Executive Order 2020-10; COVID-19 Executive Order No. 8), hereby is extended through the duration of the Gubernatorial Disaster Proclamations, with modifications to the original Stay at Home Order reflected below. **This Executive Order is effective as of May 1, 2020:**

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

- 1. Wearing a face covering in public places or when working. Any individual who is over age two and able to medically tolerate a face-covering (a mask or cloth face-covering) shall be required to cover their nose and mouth with a face-covering when in a public place and unable to maintain a six-foot social distance. Face-coverings are required in public indoor spaces such as stores.**
- 2. Requirements for essential stores. Retail stores (including, but not limited to, stores that sell groceries and medicine, hardware stores, and greenhouses, garden centers, and nurseries) designated as Essential Businesses and Operations under this Order shall to the greatest extent possible:**

- provide face coverings to all employees who are not able to maintain a minimum six-foot social distance at all times;
- cap occupancy at 50 percent of store capacity, or, alternatively, at the occupancy limits based on store square footage set by the Department of Commerce and Economic Opportunity;
- set up store aisles to be one-way where practicable to maximize spacing between customers and identify the one-way aisles with conspicuous signage and/or floor markings;
- communicate with customers through in-store signage, and public service announcements and advertisements, about the social distancing requirements set forth in this Order (Social Distancing Requirements); and
- discontinue use of reusable bags.

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

3. Requirements for non-essential stores. Retail stores not designated as Essential Businesses and Operations may re-open for the limited purposes of fulfilling telephone and online orders through pick-up outside the store and delivery – which are deemed to be Minimum Basic Operations. Employees working in the store must follow the social Distancing Requirements, and must wear a face covering when they may come within six feet of another employee or a customer.
4. Requirements for manufacturers. Manufacturers that continue to operate pursuant to this Order must follow Social Distancing Requirements and take appropriate precautions, which may include:
 - providing face coverings to all employees who are not able to maintain a minimum six-foot social distance at all times;
 - staggering shifts;
 - reducing line speeds;
 - operating only essential lines, while shutting down non-essential lines;
 - ensuring that all spaces where employees may gather, including locker rooms and lunchrooms, allow for social distancing; and
 - downsizing operations to the extent necessary to allow for social distancing and to provide a safe workplace in response to the COVID-19 emergency.
5. Requirements for all businesses. All businesses must evaluate which employees are able to work from home, and are encouraged to facilitate remote work from home when possible. All businesses that have employees physically reporting to a work-site must post the attached guidance from the Illinois Department of Public Health (IDPH) regarding workplace safety during the COVID-19 emergency.

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

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

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

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

All Essential Businesses and Operations ~~are encouraged to may~~ remain open **consistent with the express provisions of this Order and the intent of this Order as set forth in Section 1, Paragraph 16 below.** To the greatest extent feasible, Essential Businesses and Operations shall comply with Social Distancing Requirements as defined in this Executive Order, including by maintaining six-foot social distancing for both employees and members of the public at all times, including, but not limited to, when any customers are standing in line.

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

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

~~This Executive Order supersedes Section 2 of Executive Order 2020-07 (COVID-19 Executive Order No. 5), which prohibited gatherings of 50 people or more.~~

4. **Prohibited and permitted travel.** All travel, including, but not limited to, travel by automobile, motorcycle, scooter, bicycle, train, plane, or public transit, except Essential Travel and Essential Activities as defined herein, is prohibited. People riding on public transit must comply with Social Distancing Requirements to the greatest extent feasible. This Executive Order allows travel into or out of the State to maintain Essential Businesses and Operations and Minimum Basic Operations.
5. **Leaving the home for essential activities is permitted.** For purposes of this Executive Order, individuals may leave their residence only to perform any of the following Essential Activities, **and must follow the Social Distancing Requirements set forth in this Order, including wearing face coverings when in public or at work:**
 - a. **For health and safety.** To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (including, but not limited to, pets), such as, by way of example only and without limitation, seeking emergency services, obtaining medical supplies or medication, or visiting a health care professional.
 - b. **For necessary supplies and services.** To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, groceries and food, household consumer products, supplies they need to work from home, and products necessary to maintain the safety, sanitation, and essential operation of residences.
 - c. **For outdoor activity.** To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements, as defined below, such as, by way of example and without limitation, walking, hiking, running, and biking. Individuals may go to public parks and open outdoor recreation areas, **including specific State parks that remain open for certain activities, as designated by the Illinois Department of Natural Resources. Fishing and boating in groups of no more than two people are permitted. Golf is permitted only when following the guidelines provided by the Illinois Department of Commerce**

and Economic Opportunity (DCEO). ~~However,~~ Playgrounds may increase spread of COVID-19, and therefore shall be closed.

- d. **For certain types of work.** To perform work providing essential products and services at Essential Businesses or Operations (which, as defined below, includes Healthcare and Public Health Operations, Human Services Operations, Essential Governmental Functions, and Essential Infrastructure) or to otherwise carry out activities specifically permitted in this Executive Order, including Minimum Basic Operations.
 - e. **To take care of others.** To care for a family member, friend, or pet in another household, and to transport family members, friends, or pets as allowed by this Executive Order.
6. **Elderly people and those who are vulnerable as a result of illness should take additional precautions.** People at high risk of severe illness from COVID-19, including elderly people and those who are sick, are urged to stay in their residence to the extent possible except as necessary to seek medical care. Nothing in this Executive Order prevents the Illinois Department of Public Health or local public health departments from issuing and enforcing isolation and quarantine orders pursuant to the Department of Public Health Act, 20 ILCS 2305.
7. **Healthcare and Public Health Operations.** For purposes of this Executive Order, individuals may leave their residence to work for or obtain services through Healthcare and Public Health Operations.

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

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

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

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

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

Human Services Operations includes, but is not limited to: long-term care facilities; all entities licensed pursuant to the Child Care Act, 225 ILCS 10, except for day care centers, day care homes, and group day care homes; day care centers licensed as specified in Section 2, Paragraph 12(s) of this of this Executive Order; day programs exempt from licensure under Title 89 of the Illinois Administrative Code, Sections 377.3(a)(1)-(a)(4), (b)(2), and (c); day programs exempt from licensure under Title 89 of the Illinois Administrative Code, Section 377.3(d) (subject to the conditions governing exempt day care homes set forth in Section 1, Paragraph 12(s) of this Executive Order); residential settings and shelters for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness; transitional facilities; home-based settings to provide services to individuals with physical, intellectual, and/or developmental disabilities, seniors, adults, and children; field offices that provide and help to determine eligibility for basic needs including food, cash assistance, medical coverage, child care, vocational services, rehabilitation services; developmental centers; adoption agencies; businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged individuals, individuals with physical, intellectual, and/or developmental disabilities, or otherwise needy individuals.

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

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

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

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

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

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

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

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

Human Services Operations, Essential Governmental Functions, and Essential Infrastructure, and the following:²

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

² On March 19, 2020, the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency, issued a *Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response*. The definition of Essential Businesses and Operations in this Order is meant to encompass the workers identified in that Memorandum.

that issue bonds, related financial institutions, and institutions selling financial products;

- g. **Hardware and supply stores and greenhouses, garden centers, and nurseries.** Hardware stores and businesses that sell electrical, plumbing, and heating material, and greenhouses, garden centers, and nurseries;
- h. **Critical trades.** Building and Construction Tradesmen and Tradeswomen, and other trades including but not limited to plumbers, electricians, exterminators, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, HVAC, painting, moving and relocation services, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses and Operations;
- i. **Mail, post, shipping, logistics, delivery, and pick-up services.** Post offices and other businesses that provide shipping and delivery services, and businesses that ship or deliver groceries, food, alcoholic and non-alcoholic beverages, goods or services to end users or through commercial channels;
- j. **Educational institutions.** Educational institutions—including public and private pre-K-12 schools, colleges, and universities—for purposes of facilitating distance learning, performing critical research, or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible. **Educational institutions may allow and establish procedures for pick-up of necessary supplies and/or student belongings and dormitory move-out if conducted in a manner consistent with public health guidelines, including Social Distancing Requirements.** This Executive Order is consistent with and does not amend or supersede Executive Order 2020-05 (COVID-19 Executive Order No. 3) or Executive Order 2020-06 (COVID-19 Executive Order No. 4) except that affected schools **have been closed past the April 7, 2020 date reflected in those Orders**;
- k. **Laundry services.** Laundromats, dry cleaners, industrial laundry services, and laundry service providers;
- l. **Restaurants for consumption off-premises.** Restaurants and other facilities that prepare and serve food, but only for consumption off-premises, through such means as in-house delivery, third-party delivery, drive-through, curbside pick-up, and carry-out. Schools and other entities that typically provide food services to students or members of the public may continue to do so under this Executive Order on the condition that the food is provided to students or members of the public on a pick-up and takeaway basis only. Schools and other entities that

provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site due to the virus's propensity to physically impact surfaces and personal property. This Executive Order is consistent with and does not amend or supersede Section 1 of Executive Order 2020-07 (COVID-19 Executive Order No. 5) except that Section 1 is ordered to be extended through April 7, 2020;

- m. **Supplies to work from home.** Businesses that sell, manufacture, or supply products needed for people to work from home;
- n. **Supplies for Essential Businesses and Operations.** Businesses that sell, manufacture, or supply other Essential Businesses and Operations with the support or materials necessary to operate, including computers, audio and video electronics, household appliances; IT and telecommunication equipment; hardware, paint, flat glass; electrical, plumbing and heating material; sanitary equipment; personal hygiene products; food, food additives, ingredients and components; medical and orthopedic equipment; optics and photography equipment; diagnostics, food and beverages, chemicals, soaps and detergent; and firearm and ammunition suppliers and retailers for purposes of safety and security;
- o. **Transportation.** Airlines, taxis, transportation network providers (such as Uber and Lyft), vehicle rental services, paratransit, and other private, public, and commercial transportation and logistics providers necessary for Essential Activities and other purposes expressly authorized in this Executive Order;
- p. **Home-based care and services.** Home-based care for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness, including caregivers such as nannies who may travel to the child's home to provide care, and other in-home services including meal delivery;
- q. **Residential facilities and shelters.** Residential facilities and shelters for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness;
- r. **Professional services.** Professional services, such as legal services, accounting services, insurance services, real estate services (including appraisal and title services);
- s. **Day care centers for employees exempted by this Executive Order.** Day care centers granted an emergency license pursuant to Title 89, Section 407.500 of the Illinois Administrative Code, governing Emergency Day Care Programs for

children of employees exempted by this Executive Order to work as permitted. The licensing requirements for day care homes pursuant to Section 4 of the Child Care Act, 225 ILCS 10/4, are hereby suspended for family homes that receive up to 6 children for the duration of the Gubernatorial Disaster Proclamation.

- t. **Manufacture, distribution, and supply chain for critical products and industries.** Manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as pharmaceutical, technology, biotechnology, healthcare, chemicals and sanitization, waste pickup and disposal, agriculture, food and beverage, transportation, energy, steel and steel products, petroleum and fuel, mining, construction, national defense, communications, as well as products used by other Essential Businesses and Operations.
 - u. **Critical labor union functions.** Labor Union essential activities including the administration of health and welfare funds and personnel checking on the well-being and safety of members providing services in Essential Businesses and Operations – provided that these checks should be done by telephone or remotely where possible.
 - v. **Hotels and motels.** Hotels and motels, to the extent used for lodging and delivery or carry-out food services.
 - w. **Funeral services.** Funeral, mortuary, cremation, burial, cemetery, and related services.
13. **Minimum Basic Operations.** For the purposes of this Executive Order, Minimum Basic Operations include the following, provided that employees comply with Social Distancing Requirements, to the extent possible, while carrying out such operations:
- a. The minimum necessary activities to maintain the value of the business's inventory, preserve the condition of the business's physical plant and equipment, ensure security, process payroll and employee benefits, or for related functions.
 - b. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.
 - c. **For retail stores, fulfilling online and telephonic orders through pick-up outside the store or delivery.**
14. **Essential Travel.** For the purposes of this Executive Order, Essential Travel includes travel for any of the following purposes. Individuals engaged in any Essential Travel must comply with all Social Distancing Requirements as defined in this Section.

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

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

- a. **Required measures.** Essential Businesses and Operations and businesses engaged in Minimum Basic Operations must take proactive measures to ensure compliance with Social Distancing Requirements, including where possible:
 - i. **Designate six-foot distances.** Designating with signage, tape, or by other means six-foot spacing for employees and customers in line to maintain appropriate distance;
 - ii. **Hand sanitizer and sanitizing products.** Having hand sanitizer and sanitizing products readily available for employees and customers;
 - iii. **Separate operating hours for vulnerable populations.** Implementing separate operating hours for elderly and vulnerable customers; and
 - iv. **Online and remote access.** Posting online whether a facility is open and how best to reach the facility and continue services by phone or remotely.

- v. **Face Coverings and PPE. Providing employees with appropriate face coverings and requiring that employees wear face coverings where maintaining a six-foot social distance is not possible at all times. When the work circumstances require, providing employees with other PPE in addition to face coverings.**

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

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

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

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

Section 3. Savings clause.

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

JB Pritzker, Governor

Issued by the Governor April 30, 2020

Filed by the Secretary of State April 30, 2020

Exhibit C – Cease and Desist Notice

STEPHENSON COUNTY HEALTH DEPARTMENT

Building a Healthy Community

www.stephensonhealth.com



CRAIG BEINTEMA, MS, LEHP, CPHA
Public Health Administrator

10 W. Linden Street
Freeport, IL 61032-3310
(815) 235-8271
FAX: (815) 599-8443

CEASE AND DESIST NOTICE

The outbreak of COVID - 19 has resulted in the following: (1) The World Health Organization declaring a pandemic, (2) the President of the United States declaring a national emergency, and (3) the Governor of the State of Illinois, J.B. Pritzker, proclaiming a state disaster. Public officials at the federal, state, and local levels have employed extraordinary measures to protect the health, safety, and welfare of citizens.

Per Executive Order 2020-10 (COVID-19 Executive Order No. 8), Section 1: Beginning March 21, 2020 at 5 p.m., through April 7, 2020, all Illinois citizens are ordered to stay at home or at their place of residence. All persons may leave their homes or place of residence only for Essential Activities, Essential Government Functions, or to operate Essential Businesses and Operations, as set forth in the Executive Order, and must at all times and as much as reasonably possible maintain social distancing of at least six feet from any other person. Essential activities include activities in the furtherance of health and safety; obtaining necessary supplies and services; outdoor activity provided that social distancing is practiced; work related to essential businesses or operations; caring for family, friends, and pets; and obtaining public health or human services.

Per Executive Order 2020-10 (COVID-19 Executive Order No. 8), Section 2: Beginning March 21, 2020 at 5 p.m., through April 7, 2020, all businesses and operations in the State, except certain Essential Businesses and Operations that are specifically defined in the Executive Order, are required to cease all activities, unless those activities involve employees working at their own residences. Essential Businesses and Operations have not been defined to include religious gatherings of 10 or more individuals.

Per Executive Order 2020-10 (COVID-19 Executive Order No. 8), Section 3: Beginning March 21, 2020 at 5 p.m., through April 7, 2020, all public and private gatherings of any number of people occurring outside a single household or living unit are prohibited, except for certain limited purposes.

Per Executive Order 2020-10 (COVID-19 Executive Order No. 8), Section 4: Beginning March 21, 2020 at 5 p.m., through April 7, 2020, all travel, except Essential Travel, is prohibited.

Please be advised that your establishment, The Beloved Church, is required to adhere to this Executive Order, and that these steps are necessary and proper to prevent further spreading of COVID-19.

If you do not adhere to this Executive Order, the Illinois Department of Public Health has the authority to order that a place be closed and made off limits to the public, "to prevent the probable spread of a dangerously contagious or infectious disease. . . until such time as the condition can be corrected or the danger to the public health is eliminated or reduced in such a manner that no substantial danger to the public's health any longer exists." 20 ILCS 2305/2(b). The process of issuing such an order is set forth in 20 ILCS 2305/2(c). Furthermore, police officers, sheriffs and all other officers in Illinois are authorized to enforce such orders. In addition to such an order of closure issued by the Illinois Department of Public Health you may be subject to additional civil and criminal penalties.

Mr. Craig Beintema
Stephenson County Public Health Administrator
March 31, 2020

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 720. Criminal Offenses
Criminal Code
Act 5. Criminal Code of 2012 (Refs & Annos)
Title III. Specific Offenses
Part B. Offenses Directed Against the Person
Article 12. Bodily Harm (Refs & Annos)
Subdivision 10. Endangerment

720 ILCS 5/12-5
Formerly cited as IL ST CH 38 ¶ 12-5

5/12-5. **Reckless conduct**

Effective: July 1, 2011
Currentness

Potential Penalties
Up to (each occurrence)
- 2 years court supervision
conditional discharge
probation
- up to 1 year in jail
- up to a fine of \$2,500
- Court costs

§ 12-5. **Reckless conduct.**

(a) A person commits **reckless conduct** when he or she, by any means lawful or unlawful, **recklessly** performs an act or acts that:

(1) cause bodily harm to or endanger the safety of another person; or

(2) cause great bodily harm or permanent disability or disfigurement to another person.

(b) Sentence.

Reckless conduct under subdivision (a)(1) is a Class A misdemeanor. **Reckless conduct** under subdivision (a)(2) is a Class 4 felony.

Credits

Laws 1961, p. 1983, § 12-5, eff. Jan. 1, 1962. Amended by P.A. 77-2638, § 1, eff. Jan. 1, 1973; P.A. 93-710, § 5, eff. Jan. 1, 2005; P.A. 96-1551, Art. 1, § 5, eff. July 1, 2011.

Formerly Ill.Rev.Stat.1991, ch. 38, ¶ 12-5.

720 I.L.C.S. 5/12-5, IL ST CH 720 § 5/12-5

Current through P.A. 101-629. Some statute sections may be more current, see credits for details.

Exhibit D –*First Baptist Church v. Kelly*, No. 10-1102 (D. Kan.,
April 18, 2020)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY

ON FIRE CHRISTIAN CENTER, INC.

PLAINTIFF

v.

CIVIL ACTION NO. 3:20-CV-264-JRW

GREG FISCHER, et al.

DEFENDANTS

TEMPORARY RESTRAINING ORDER

1. The Court **GRANTS** the motion for a temporary restraining order filed by On Fire Christian Center, Inc. (“On Fire”) against Mayor Greg Fischer and the City of Louisville (together, “Louisville”).

2. The Court **ENTERS** this Temporary Restraining Order on Saturday, April 11, 2020 at 2:00 P.M.¹

3. The Court **ENJOINS** Louisville from enforcing; attempting to enforce; threatening to enforce; or otherwise requiring compliance with any prohibition on drive-in church services at On Fire.²

4. Unless the Court enters this Temporary Restraining Order, the members of On Fire will suffer irreparable harm.³ The government plans to substantially burden their religious practice on one of the most important holidays of the Christian calendar, Easter Sunday.⁴

¹ Fed. R. Civ. P. 65(b)(2).

² As a general rule, a court’s injunction “should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). But Louisville ought not to view the limits of this injunction as a green light to violate the religious liberty of non-parties. *Cf.* 42 U.S.C. § 1983.

³ *Id.*

⁴ DN 1 ¶ 13.

5. Notice to Louisville before entering this Temporary Restraining Order isn't necessary.⁵ The facts in On Fire's affidavit "clearly show that immediate and irreparable injury, loss, or damage will result to [On Fire] before [Louisville] may be heard in opposition."⁶ J. Brooken Smith, On Fire's lawyer, certified that he sent Louisville a letter yesterday detailing their potential claims but didn't hear anything back.⁷

6. The Court issued this Temporary Restraining Order without notice because Easter Sunday is less than one day away.⁸ Providing notice to Louisville before entering this Temporary Restraining Order would be impractical in such a short period of time.

7. On Fire does not need to post a security because enjoining Louisville from prohibiting drive-in church services at On Fire doesn't interfere with Louisville's rights.⁹

8. The Court **GRANTS** On Fire's request for Oral Argument. The Court will hold a telephonic hearing on the preliminary injunction motion on **April 14, 2020 at 11:00 A.M.** Counsel shall email Ms. Megan Jackson at Megan_Jackson@kywd.uscourts.gov for the hearing's call-in number and access code. Members of the public interested in listening to the hearing may also email Ms. Jackson.

9. The Court **ORDERS** On Fire's lawyers to serve a copy of this Temporary Restraining Order and Opinion on Mike O'Connell, Jefferson County Attorney.



Justin R Walker, District Judge
United States District Court

⁵ Fed. R. Civ. P. 65(b)(1).

⁶ Fed. R. Civ. P. 65(b)(1)(A).

⁷ Fed. R. Civ. P. 65(b)(1)(B); DN 3-1 #43.

⁸ Fed. R. Civ. P. 65(b)(2).

⁹ Fed. R. Civ. P. 65(c).

4/11/2020

MEMORANDUM OPINION

On Holy Thursday, an American mayor criminalized the communal celebration of Easter.

That sentence is one that this Court never expected to see outside the pages of a dystopian novel, or perhaps the pages of *The Onion*. But two days ago, citing the need for social distancing during the current pandemic, Louisville’s Mayor Greg Fischer ordered Christians not to attend Sunday services, even if they remained *in their cars* to worship – and even though it’s *Easter*.

The Mayor’s decision is stunning.

And it is, “beyond all reason,” unconstitutional.¹⁰

* * *

According to St. Paul, the first pilgrim was Abel. With Enoch, Noah, Abraham, Isaac, Jacob, and Sara, they “died in faith, not having received the promises” of God’s promised kingdom.¹¹ But they saw “them afar off, and were persuaded of them, and embraced them, and confessed that they were strangers and pilgrims on the earth.”¹²

The Plymouth Colony’s second Governor, William Bradford, alluded to St. Paul’s pilgrims when he recalled, years later, his fellow colonists’ departure from England. The land they were leaving was comfortable and familiar. The ocean before them was, for them, unknown and dangerous. So too was the New World, where half would not survive the first winter.¹³ There

¹⁰ *Cf. Jacobson v. Massachusetts*, 197 U.S. 11, 31 (1905).

¹¹ Hebrews 11:13.

¹² *Id.*

¹³ Patricia Deetz and James Deetz, *Mayflower Passenger Deaths, 1620-1621*, THE PLYMOUTH COLONY ARCHIVE PROJECT (Dec. 14, 2007), <http://www.histarch.illinois.edu/plymouth/Maydeaths.html>.

were “mutual embraces and many tears,” as they said farewell to sons, daughters, mothers, and fathers, too young or old or fearful or frail to leave the Old World.¹⁴

But they sailed west because west was where they would find what they wanted most, what they needed most: the liberty to worship God according to their conscience. “They knew they were pilgrims,” wrote Bradford, “and looked not much on those things” left behind, “but lifted their eyes to heaven, their dearest country and quieted their spirits.”¹⁵

The Pilgrims were heirs to a long line of persecuted Christians, including some punished with prison or worse for the crime of celebrating Easter¹⁶ – and an even longer line of persecuted peoples of more ancient faiths.¹⁷ And although their notions of tolerance left more than a little to be desired,¹⁸ the Pilgrims understood at least this much: *No* place, not even the unknown, is worse than *any* place whose state forbids the exercise of your sincerely held religious beliefs.

The Pilgrims’ history of fleeing religious persecution was just one of the many “historical instances of religious persecution and intolerance that gave concern to those who drafted the Free

¹⁴ WILLIAM BRADFORD, HISTORY OF PLYMOUTH COLONY 60 (Charles Deane, 1948) https://www.google.com/books/edition/History_of_Plymouth_Plantation/tYecOAN1cwwC?hl=en&gbpv=1&dq=inauthor:%22WILLIAM+BRADFORD%22&printsec=frontcover.

¹⁵ *Id.* at 59 (modernized).

¹⁶ Tacitus’ *Annals* 15:44, available at <http://www.perseus.tufts.edu/hopper/text?doc=Tac.+Ann.+15.44&redirect=true>.

¹⁷ See, e.g., *Exodus* 1:11-18.

¹⁸ Nathaniel Philbrick, *Mayflower* 177 (2006) (“It was the Puritans who led the way in persecuting the Quakers, but the Pilgrims were more than willing to follow along. As a Quaker sympathizer acidly wrote, the ‘Plymouth-saddle is on the Bay horse,’ and in 1660 Isaac Robinson, son of the late pastor John Robinson, was dis-enfranchised for advocating a policy of moderation to the Quakers.”).

Exercise Clause” of our Constitution’s First Amendment.”¹⁹ It provides, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”²⁰

At the time of that Amendment’s ratification, religious liberty was among the American experiment’s most audacious guarantees. For millennia, soldiers had fought and killed to impose their religious doctrine on their neighbors. A century before America’s founding, in Germany alone, religious conflict took the lives of one out of every five men, women, and children.²¹ But not so in America. “Among the reasons the United States is so open, so tolerant, and so free is that no person may be restricted or demeaned by government in exercising his or her religion.”²²

Of course, pockets of society have not always lived up to our nation’s ideals. Slave owners flogged slaves for attending prayer meetings.²³ Murderous mobs drove the Latter Day Saints into Utah.²⁴ Bigotry toward Roman Catholics motivated a majority of states to enact Blaine Amendments.²⁵ Harvard University created a quota system to admit fewer Jewish students.²⁶ Five

¹⁹ *Church of the Lukumi Balalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993) (quoting *Bowen v. Roy*, 476 U.S. 693, 703 (1986)).

²⁰ U.S. Const. amend. I; *see also*, U.S. Const. amend. XIV (“No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”).

²¹ Jason Daley, *Researchers Catalogue the Grisly Deaths of Soldiers in the Thirty Years’ War*, SMITHSONIANMAG.COM (Jun. 6, 2017), <https://www.smithsonianmag.com/smart-news/researchers-catalogue-grisly-deaths-soldiers-thirty-years-war-180963531/>.

²² *Burwell v. Hobby Lobby*, 573 U.S. 682, 739 (2014) (Kennedy, J., concurring).

²³ Albert J. Raboteau, *The Secret Religion of the Slaves: They often risked floggings to worship God*, CHRISTIANITY TODAY <https://www.christianitytoday.com/history/issues/issue-33/secret-religion-of-slaves.html> (last accessed Apr. 11, 2020).

²⁴ *See* *Mormon Pioneers*, PIONEERS, https://www.bbc.co.uk/religion/religions/mormon/history/pioneers_1.shtml. (last accessed Apr. 11, 2020).

²⁵ *See* Jane G. Rainey, *Blaine Amendments*, THE FIRST AMENDMENT ENCYCLOPEDIA, <https://www.mtsu.edu/first-amendment/article/1036/blaine-amendments> (last accessed Apr. 11, 2020).

²⁶ *Anti-Semitism in the U.S.: Harvard’s Jewish Problem*, JEWISH VIRTUAL LIBRARY, <https://www.jewishvirtuallibrary.org/harvard-s-jewish-problem> (last accessed Apr. 11, 2020).

decades ago, a former member of the racist, anti-Semitic, and anti-Catholic Ku Klux Klan sat on the Supreme Court.²⁷ And just over three decades ago, another ex-Klansman was the Majority Leader of the United States Senate.²⁸

Some of that bigotry was not state-sponsored. But in recent years, an expanding government has made the Free Exercise Clause more important than ever. It was not long ago, for example, that the government told the Supreme Court it can prohibit a church from choosing its own minister;²⁹ force religious business owners to buy pharmaceuticals they consider abortion-inducing;³⁰ and conscript nuns to provide birth control.³¹ Even after the Supreme Court vacated lower court decisions – by 9-0, 5-4, and 8-0 margins – the Free Exercise Clause remains a too-often-tested bulwark against discrimination toward people of faith, from religious cakemakers to religious preschoolers.³²

This state of affairs has severe implications for religious Americans, because “freedom means that all persons have the right to believe or strive to believe in a divine creator and a divine law.”³³ But its importance extends beyond the liberty to worship. It threatens liberty of all kinds. That’s because, as de Tocqueville wrote, “religion, which among the Americans never directly

²⁷ Kat Eschner, *This Supreme Court Justice Was a KKK Member*, SMITHSONIAN MAG., Feb. 27, 2017 <https://www.smithsonianmag.com/smart-news/supreme-court-justice-was-kkk-member-180962254/> (last accessed Apr. 11, 2020).

²⁸ Robert C. Byrd, *United States Senator*, <https://www.britannica.com/biography/Robert-C-Byrd> (last accessed Apr. 11, 2020).

²⁹ See *Hosanna Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171, 185 (2012).

³⁰ See *Hobby Lobby*, 573 U.S. at 691.

³¹ See *Zubic v. Burwell*, 136 S.Ct. 1557 (2016).

³² See *Masterpiece Cakeshop Ltd. v. Colorado Human Rights Comm’n*, 138 S.Ct. 1719 (2018); *Trinity Lutheran Church v. Comer*, 137 S.Ct. 1212 (2017).

³³ 573 U.S. at 736 (Kennedy, J., concurring).

takes part in the government of society, must be considered as the first of their political institutions; for if it does not give them the taste for liberty, it singularly facilitates use of it.”³⁴

* * *

That brings us to this case. “As we are all painfully aware, our nation faces a public health emergency caused by the exponential spread of COVID-19, the respiratory disease caused by the novel coronavirus SARS-CoV-2.”³⁵ Four days ago, defendant Mayor of Louisville Greg Fischer said it was “with a heavy heart” that he was banning religious services, even if congregants remain in their cars during the service.³⁶ He asserted, “It’s not really practical or safe to accommodate drive-up services taking place in our community.”³⁷ Drive-through restaurants and liquor stores are still open.³⁸

Two days ago, on Holy Thursday, the Mayor threatened church members and pastors if they hold a drive-in Easter service:

³⁴ Alexis De Tocqueville, *Democracy in America I* at 475, Eduardo Nolla (ed.) & James T. Schleifer (tr.) (2012); cf., NORTHWEST ORDINANCE 1787 (those elected by our country’s founding generation believed “religion” to be “necessary to ... the happiness of mankind”) available at <https://www.visitthecapitol.gov/exhibitions/artifact/northwest-ordinance-1787> (last accessed Apr. 11, 2020).

³⁵ *In re Abbott*, 2020 WL 1685929 *2 (5th Cir. Apr. 7, 2020).

³⁶ DN 3-4 (Savannah Fadens & Ben Tobin, *Church vs. State: Can Kentucky Governments Block Religious Gatherings Amid COVID-19?*, LOUISVILLE COURIER J. (Apr. 9, 2020) <https://www.courier-journal.com/story/news/2020/04/09/coronavirus-kentucky-can-beshear-block-religious-gatherings/2972356001/> (last accessed April 9, 2020)).

³⁷ *Id.*

³⁸ Kentucky Attorney General Daniel Cameron has said, “As long as Kentuckians are permitted to drive through liquor stores, restaurants, and other businesses during the COVID-19 pandemic, the law requires that they must also be allowed to participate in drive-in church services, consistent with existing policies to stop the spread of COVID-19.” Otts, Chris. FISCHER: POLICE WILL COLLECT LICENSE PLATES OF EASTER CHURCHGOERS, WDRB.com, https://www.wdrb.com/in-depth/fischer-police-will-collect-license-plates-of-easter-churchgoers/article_795c708a-7b6d-11ea-8e48-d7138b31add7.html (last accessed Apr. 10, 2020).

- “We are not allowing churches to gather either in person or in any kind of drive-through capacity.”³⁹
- “Ok so, if you are a church or you are a churchgoing member and you do that, you’re in violation of the mandate from the governor, you’re in violation of the request from my office and city government to not do that.”⁴⁰
- “We’re saying no church worshiping, no drive-throughs.”⁴¹

The same day, the Mayor’s spokesperson said he would use the police to deter and disburse drive-in religious gatherings: “Louisville Metro Police have been proactive about reaching out to those we’ve heard about, and discouraging organizers from proceeding.”⁴² She added, perhaps in an effort to be less threatening, “This is not a law enforcement matter, it’s a community matter.”⁴³ But the Louisville Metro Police are not Peace Corps volunteers or community organizers; their job *is* law enforcement. And the Mayor’s spokesperson backed up the Mayor’s threat to use the police with a request for “anyone who sees violations from our social distancing guidance to reach out to 311” to inform on their family, friends, and neighbors.⁴⁴

Yesterday, on Good Friday, the Mayor’s threats continued:

³⁹ DN 1 ¶ 27 (quoting Greg Fischer, *Daily COVID-19 Briefing By Louisville Mayor Greg Fischer* (Apr. 9, 2020), <https://www.wave3.com/2020/04/09/fischer-confirms-new-cases-more-deaths/> (embedded video)).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² DN 3-4 (Savannah Fadens & Ben Tobin, *Church vs. State: Can Kentucky Governments Block Religious Gatherings Amid COVID-19?*, LOUISVILLE COURIER J. (Apr. 9, 2020) <https://www.courier-journal.com/story/news/2020/04/09/coronavirus-kentucky-can-beshear-block-religious-gatherings/2972356001/> (last accessed April 9, 2020)).

⁴³ *Id.*

⁴⁴ *Id.*; cf. George Orwell, 1984.

- “In order to save lives, we must not gather in churches, drive-through services, family gatherings, social gatherings this weekend.”⁴⁵
- “If there are gatherings on Sunday, Louisville Metro Police Department will be there on Sunday handing out information detailing the health risks involved, and I have asked LMPD to record license plates of all vehicles in attendance.”⁴⁶
- “We will share that information with our public health department, so they can follow up with the individuals that are out in church and gathering in groups, which is clearly a very, very unsafe practice.”⁴⁷

Today is Holy Saturday. Tomorrow is Easter Sunday. This is for Christians, as Mayor Fischer has said, “the holiest week of the year.”⁴⁸

On Sunday, tomorrow, Plaintiff On Fire Christian Center wishes to hold an Easter service, as Christians have done for two thousand years. On Fire has planned a drive-in church service in

⁴⁵ COVID-19 Daily Briefing, 04-10-2020, <https://www.facebook.com/MayorGregFischer/videos/514408469234775/>.

⁴⁶ Otts, Chris. FISCHER: POLICE WILL COLLECT LICENSE PLATES OF EASTER CHURCHGOERS, WDRB.com, https://www.wdrb.com/in-depth/fischer-police-will-collect-license-plates-of-easter-churchgoers/article_795c708a-7b6d-11ea-8e48-d7138b31add7.html (last accessed Apr. 10, 2020).

⁴⁷ Otts, Chris. FISCHER: POLICE WILL COLLECT LICENSE PLATES OF EASTER CHURCHGOERS, WDRB.com, https://www.wdrb.com/in-depth/fischer-police-will-collect-license-plates-of-easter-churchgoers/article_795c708a-7b6d-11ea-8e48-d7138b31add7.html (last accessed Apr. 10, 2020); cf. Wheatley, Kevin. PARTICIPANTS IN WEEKEND GATHERINGS MUST SELF-QUARANTINE FOR 2 WEEKS, GOV. BESHEAR SAYS, WDRB.COM, https://www.wdrb.com/news/participants-in-weekend-gatherings-must-self-quarantine-for-2-weeks-gov-beshear-says/article_01fa77c6-7b72-11ea-90c7-7747ea013459.html (last accessed Apr. 10, 2020) (“License plate information will be collected from cars in parking lots by Kentucky State Police and forwarded to local health departments, who will then present an order to self-quarantine for 14 days at the owners’ homes.”).

⁴⁸ COVID-19 Daily Briefing, 04-10-2020, <https://www.facebook.com/MayorGregFischer/videos/514408469234775/>.

accordance with the Center for Disease Control’s social distancing guidelines.⁴⁹ Yesterday, near the close of business, On Fire filed this suit, including a request for a Temporary Restraining Order. It has asked the Court to stop defendants Mayor Greg Fischer and Metro Louisville from carrying out their plan to enforce their interpretation of the Governor’s social distancing order.⁵⁰

* * *

In reviewing a TRO motion, the Court considers whether:

- 1) On Fire has a strong likelihood of success on the merits;
- 2) On Fire would suffer irreparable injury without a TRO;
- 3) The “balance of the equities” tips in On Fire’s favor; and
- 4) “[A]n injunction is in the public interest.”⁵¹

On Fire can satisfy all four parts, and it is entitled to a Temporary Restraining Order. The threats against On Fire by the Mayor and Louisville Metro violate the First Amendment and Kentucky law.

I. On Fire has demonstrated a strong likelihood of success on the merits on its two Free Exercise claims and its Kentucky statutory claims.

⁴⁹ Centers for Disease Control & Prevention, SOCIAL DISTANCING, QUARANTINE, & ISOLATION, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html> (last accessed Apr. 11, 2020).

⁵⁰ There is doubt about the meaning of the Governor’s social distancing order. Kentucky Attorney General Daniel Cameron has said, “As long as Kentuckians are permitted to drive through liquor stores, restaurants, and other businesses during the COVID-19 pandemic, the law requires that they must also be allowed to participate in drive-in church services, consistent with existing policies to stop the spread of COVID-19.” Otts, Chris. FISCHER: POLICE WILL COLLECT LICENSE PLATES OF EASTER CHURCHGOERS, WDRB.com, https://www.wdrb.com/in-depth/fischer-police-will-collect-license-plates-of-easter-churchgoers/article_795c708a-7b6d-11ea-8e48-d7138b31add7.html (last accessed Apr. 10, 2020). But what matters for this case is not what the Governor has purported to authorize the Mayor and the Louisville Metro Police Department to do; what matters is what the Mayor and the Police *are doing* and what state action is imminent. See *Clapper v. ACLU*, 568 U.S. 398, 401 (2013).

⁵¹ *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008); see also, *Ohio Republican Party v. Brunner*, 543 F.3d 357, 361 (6th Cir. 2008) (the Court considers the same factors in considering whether to grant a TRO or a preliminary injunction).

A. On Fire has demonstrated a strong likelihood of success on its federal and state Free Exercise claims.

There is no doubt that society has the strongest of interests in curbing the growth of a deadly disease, which is the interest Mayor Fischer and Metro Louisville (together, “Louisville”) has asserted when ordering churches and churchgoers to stay home on Easter. “When faced with a society-threatening epidemic, a state may implement emergency measures that curtail constitutional rights so long as the measures have at least some ‘real or substantial relation’ to the public health crisis and are not ‘beyond all question, a plain, palpable invasion of rights secured by the fundamental law.’”⁵²

In this case, Louisville is violating the Free Exercise Clause “beyond all question.”⁵³

To begin, Louisville is substantially burdening On Fire’s sincerely held religious beliefs in a manner that is not “neutral” between religious and non-religious conduct, with orders and threats that are not “generally applicable” to both religious and non-religious conduct.⁵⁴ “The principle that government, in pursuit of legitimate interests, cannot in a selective manner impose burdens only on conduct motivated by religious belief is essential to the protection of the rights guaranteed by the Free Exercise Clause.”⁵⁵ In *Lukumi Babalu*, the City of Hialeah’s ban on animal sacrifice was not “neutral” or “generally applicable” because it banned the Church of Lukumi Babalu’s ritualistic animal sacrifices while at the same time it did not ban most other kinds of animal killing, including kosher slaughtering and killing animals for non-religious reasons.⁵⁶

⁵² *In re Abbott*, 2020 WL 1685929, at *7 (5th Cir. Apr. 7, 2020) (quoting *Jacobson*, 197 U.S. at 31).

⁵³ *Id.*; see also, *In re Abbott*, No. 20-50296, slip op. at 2-3 (5th Cir. Apr. 10, 2020).

⁵⁴ *Church of the Lukumi Balalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1990).

⁵⁵ *Id.* at 543.

⁵⁶ *Id.* at 536.

Here, Louisville has targeted religious worship by prohibiting drive-in church services, while not prohibiting a multitude of other non-religious drive-ins and drive-throughs – including, for example, drive-through liquor stores. Moreover, Louisville has not prohibited parking in parking lots more broadly – including, again, the parking lots of liquor stores. When Louisville prohibits religious activity while permitting non-religious activities, its choice “must undergo the most rigorous of scrutiny.”⁵⁷ That scrutiny requires Louisville to prove its interest is “compelling” and its regulation is “narrowly tailored to advance that interest.”⁵⁸

Louisville will be (highly) unlikely to make the second of those two showings. To be sure, Louisville is pursuing a compelling interest of the highest order through its efforts to contain the current pandemic. But its actions violate the Free Exercise Clause “beyond all question”⁵⁹ because they are not even close to being “narrowly tailored to advance that interest.”⁶⁰ As in *Lukumi Babalu*, the government’s “proffered objectives are not pursued with respect to analogous non-religious conduct, and those interests could be achieved by narrower ordinances that burdened religion to a far lesser degree.”⁶¹

In other words, Louisville’s actions are “underinclusive” and “overbroad.”⁶² They’re underinclusive because they don’t prohibit a host of equally dangerous (or equally harmless) activities that Louisville has permitted on the basis that they are “essential.” Those “essential” activities include driving through a liquor store’s pick-up window, parking in a liquor store’s

⁵⁷ *Id.*; see also, *id.* (“A law that targets religious conduct for distinctive treatment or advances legitimate governmental interests only against conduct with a religious motivation will survive strict scrutiny only in rare cases.”).

⁵⁸ *Id.* at 531-32.

⁵⁹ *In re Abbott*, 2020 WL 1685929, at *7 (quoting *Jacobson v. Massachusetts*, 197 U.S. 11, 31 (1905)); see also *In re Abbott*, No. 20-50296, slip op. at 2-3 (Apr. 10, 2020 5th Cir.).

⁶⁰ 494 U.S. at 531-32

⁶¹ *Id.* at 546.

⁶² *Id.*

parking lot, or walking into a liquor store where other customers are shopping. The Court does not mean to impugn the perfectly legal business of selling alcohol, nor the legal and widely enjoyed activity of drinking it. But if beer is “essential,” so is Easter.

Louisville’s actions are also overbroad because, at least in this early stage of the litigation, it appears likely that Louisville’s interest in preventing churchgoers from spreading COVID-19 would be achieved by allowing churchgoers to congregate in their cars as On Fire proposes. On Fire has committed to practicing social distancing in accordance with CDC guidelines. “Cars will park six feet apart and all congregants will remain in their cars with windows no more than half open for the entirety of the service.”⁶³ Its pastor and a videographer will be the only people outside cars, and they will be at a distance from the cars.⁶⁴

Louisville might suggest that On Fire members could participate in an online service and thus satisfy their longing for communal celebration. But some members may not have access to online resources. And even if they all did, the Free Exercise Clause protects their right to worship as their conscience commands them. It is not the role of a court to tell religious believers what is and isn’t important to their religion, so long as their belief in the religious importance is sincere. The Free Exercise clause protects sincerely held religious beliefs that are at times not “acceptable, logical, consistent, or comprehensible to others.”⁶⁵

The Court does not doubt that Mayor Fischer can satisfy his sincerely held religious beliefs by watching a service on the Internet. Millions of Americans will do that this Easter, and the Court does not doubt that they will be true to their own faiths. Nothing in this Opinion should be read

⁶³ DN 3-2 ¶ 6.

⁶⁴ *Id.*

⁶⁵ 508 U.S. at 531 (quoting *Thomas v. Review Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 714 (1981)).

to impugn the Mayor's motives or his faith. Indeed, it is obvious he is trying to save lives. But when considering the rights guaranteed by the Free Exercise Clause, it doesn't matter that the government burdening the religious practices of others "consists entirely of the pure-hearted, if the law it enacts in fact singles out a religious practice for special burdens."⁶⁶

At the same time, the Court does not for a moment doubt that for some believers Easter means gathering together, if not hand in hand or shoulder to shoulder, then at least car fender to car fender. Religion is not "some purely personal avocation that can be indulged entirely in secret, like pornography, in the privacy of one's room. For most believers, it is *not* that, and has never been."⁶⁷ Instead, just as many religions reinforce their faith and their bonds with the faithful through religious assemblies, many Christians take comfort and draw strength from Christ's promise that "where two or three are gathered together in My name, there am I in the midst of them."⁶⁸ Indeed, as On Fire points out, "the Greek word translated 'church' in our English versions of the Christian scriptures is the word 'ekklesia,' which literally means 'assembly.'"⁶⁹

It is true that On Fire's church members could *believe* in everything Easter teaches them from their homes on Sunday. So too could the Pilgrims before they left Europe. But the Pilgrims demanded more than that. And so too does the Free Exercise Clause. It "guarantees the free *exercise* of religion, not just the right to inward belief."⁷⁰ That promise is as important for the minister as for those ministered to, as vital to the shepherd as to the sheep. And it is as necessary now as when the *Mayflower* met Plymouth Rock.

⁶⁶ 508 U.S. at 559 (Scalia, J., concurring).

⁶⁷ *Lee v. Weisman*, 505 U.S. 577, 645 (1992) (Scalia, J., dissenting).

⁶⁸ Matthew 18:20.

⁶⁹ DN 1 ¶ 14 (quoting A.T. Robertson, A GRAMMAR OF THE GREEK NEW TESTAMENT IN LIGHT OF HISTORICAL RESEARCH (3d ed. 1919)).

⁷⁰ *Trinity Lutheran*, 137 S.Ct. at 2026 (Gorsuch, J., concurring).

Finally, nothing in this legal analysis should be read to imply that the rules of the road in constitutional law remain rigidly fixed in the time of a national emergency. We know that from *Jacobson v. Massachusetts*.⁷¹ The COVID-19 pandemic has upended every aspect of our lives: how we work, how we live, how we celebrate, and how we mourn. We worry about our loved ones and our nation. We have made tremendous sacrifices. And the Constitution is not “a suicide pact.”⁷²

But even under *Jacobson*, constitutional rights still exist.⁷³ Among them is the freedom to worship as we choose. The brief history at the outset of this opinion does not even scratch the surface of religious liberty’s importance to our nation’s story, identity, and Constitution. But mindful of that importance, the Court believes there is a strong likelihood On Fire will prevail on the merits of its claim that Louisville may not ban its citizens from worshipping – or, in the relative safety of their cars, from worshipping together.⁷⁴

B. On Fire has also demonstrated a strong likelihood of success on its Kentucky statutory claim.

⁷¹ 197 U.S. 11 (1905); *see also In re Abbott*, 2020 WL 1685929 at *7 (“*Jacobson* remains good law.”).

⁷² *Terminiello v. City of Chicago*, 337 U.S. 1, 37 (1949) (Jackson, J., dissenting).

⁷³ *Id.* at 31 (emergency does not permit “beyond all question, a plain, palpable invasion of rights secured by the fundamental law”); *cf.* at 27 (... “an acknowledged power of a local community to protect itself against an epidemic threatening the safety of all might be exercised in particular circumstances and in reference to particular persons in such an *arbitrary, unreasonable manner*, or might go so far beyond what was reasonably required for the safety of the public, *as to authorize or compel the courts to interfere for the protection of such persons.*”) (emphasis added); *id.* at 38 (“...the police power of a state, whether exercised directly by the legislature, or by a local body acting under its authority, may be exerted in such circumstances, or *by regulations so arbitrary and oppressive in particular cases, as to justify the interference of the courts to prevent wrong and oppression.*”) (emphasis added).

⁷⁴ Since the Kentucky Supreme Court has held that the right to worship in its state Constitution is “in line with United States Supreme Court precedent” on the federal Free Exercise Clause, Louisville’s ban is unconstitutional under state law, too. *Gingerich v. Commonwealth*, 382 S.W.3d 835, 844 (Ky. 2012).

Kentucky’s Religious Freedom Restoration Act prohibits Louisville from “substantially burden[ing] a person’s freedom of religion.”⁷⁵ Louisville must prove “by clear and convincing evidence that [they have] a compelling interest in infringing the specific act [and have] used the least restrictive means to further that interest.”⁷⁶ As was true for non-neutral laws targeting religion, “judges in RFRA cases may question only the sincerity of a plaintiff’s religious belief, not the correctness or reasonableness of that religious belief.”⁷⁷ And as with the strict scrutiny analysis in the constitutional context, to survive under RFRA the government must “show[] that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting parties in these cases.”⁷⁸ And as above, banning drive-in church services isn’t the least restrictive means to advance Louisville’s interest in preventing the spread of coronavirus. Moreover, if sitting in cars did pose a significant danger of spreading the virus, Louisville would close all drive-throughs and parking lots that are not related to maintaining public health, which they haven’t done.⁷⁹

Given the strong likelihood On Fire will succeed on its religious liberty claims, there is no need to address whether it will also succeed on its freedom-of-assembly claim.

⁷⁵ Ky. Rev. Stat. § 446.350.

⁷⁶ *Id.*

⁷⁷ *Priests for Life v. HHS*, 808 F.3d 1, 17 (D.C. Cir. 2015) (Kavanaugh, J., dissenting from denial of reh’g *en banc*) (citing *Hobby Lobby*, 134 S.Ct. at 2774 n.28, 2777-79; *Thomas*, 450 U.S. at 714-16), vac’d by *Zubik v. Burwell*, 136 S.Ct. 1557 (2016)); *see also Hobby Lobby*, 573 U.S. at 725 (“it is not for us to say that their religious beliefs are mistaken or insubstantial. Instead, our ‘narrow function ... in this context is to determine’ whether the line drawn reflects ‘an honest conviction’”) (quoting *Thomas*, 450 U.S. at 716).

⁷⁸ *Hobby Lobby*, 573 U.S. at 727.

⁷⁹ In the interest of moving on from the Court’s example of liquor stores that are open, the Court takes judicial notice that ice cream shops (and their parking lots) are still open – to the relief of every sweet tooth in the city.

II. On Fire would suffer irreparable injury without a TRO.

“Our frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is *likely* in the absence of an injunction.”⁸⁰ Here, that is not difficult. Protecting religious freedom was a vital part of our nation’s founding, and it remains crucial today. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”⁸¹

For Christians, there is nothing minimal about celebrating Easter, the holiest day in the Christian calendar. And for the reasons explained above, the Court does not doubt that for them, an online substitute for an in-person, in-the-car celebration is no substitute at all. On Fire “and its members have a sincerely held religious belief that physical corporate gathering of believers each Sunday, especially on Easter Sunday, is a central element of religious worship commanded by the Lord.”⁸² Having to skip Easter Sunday would substantially burden On Fire’s members’ religious practice.⁸³

III. The balance of the equities tips in On Fire’s favor.

If the Court did not immediately intervene and stop Louisville’s enforcement plan, churchgoers at On Fire would face an impossible choice: skip Easter Sunday service, in violation of their sincere religious beliefs, or risk arrest, mandatory quarantine, or some other enforcement action for practicing those sincere religious beliefs. Unless a government action is far more narrowly tailored to a compelling government interest than is Louisville’s, that is a choice no one

⁸⁰ *Winter*, 555 U.S. at 375.

⁸¹ *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also Newsom v. Norris*, 888 F.2d 371, 378 (6th Cir. 1989) (“The Supreme Court has unequivocally admonished that even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief.”).

⁸² DN 3-2 ¶ 7.

⁸³ DN 3-2 ¶ 11.

in our nation should ever have to face. Conversely, because Louisville allows other, non-religious and no-more-essential parking and drive-throughs, there is not yet any evidence in the record that stopping Louisville from enforcing its unconstitutional order will do it any harm.

IV. A TRO is in the public interest.

In considering whether a TRO is in the public interest, “a court must at the very least weigh the potential injury to the public health when it considers enjoining state officers from enforcing emergency public health laws.”⁸⁴ The Court has considered that question above. With the limited record before the Court, it is unclear how a gathering of cars in a parking lot is a danger to public health. Admittedly, the record as it stands is sparse and one-sided. But in that limited record, there isn’t any evidence that On Fire’s parking lot will prove more dangerous than the countless other parking lots that remain open. Nor is there any evidence that churches are less essential than every other business that is currently allowed to be open – liquor stores among them.

Moreover, whereas the public may have no interest in Louisville’s overbroad ban on drive-in church services, the public has a profound interest in men and women of faith worshipping together this Easter in a manner consistent with their conscience. You do not have to share On Fire’s faith to believe that celebrating that faith – while gathered together in praise of the One they believe healed the sick and conquered death – will bring hope to many in need of hope this Holy Week.

* * *

There is no instruction book for a pandemic. The threat evolves. Experts reevaluate. And government officials make the best calls they can, based on the best information they have.

⁸⁴ *In re Abbott*, 2020 WL 1685929 *12 (5th Cir. Apr. 7, 2020).

Sometimes those government officials will disagree. The Mayor of Louisville, in this case, wants to save lives. The state Attorney General, to pick one example of an official who disagrees with the Mayor, surely shares the Mayor's concern for the public's health. Neither has faced this situation before. We all hope that we will never have to face anything like this again. And neither leader, the Court feels confident, is acting with malice toward the physical or spiritual health of On Fire's congregation.

Some who read this Court's opinion will disagree with the Mayor. Others will disagree with the Court. And each camp will include some readers who share On Fire's faith, others whose conscience calls them to a different faith, and still others who profess no faith at all. Each of them, believers and non-believers, deserves at least this from the Court: To know why I decided as I did. You may not agree with my reasons, but my role as a judge is to explain, to teach, and perhaps, at least on occasion, to persuade.

The Christians of On Fire, however, owe no one an explanation for why they will gather together this Easter Sunday to celebrate what they believe to be a miracle and a mystery. True, they can attempt to explain it. True, they can try to teach. But to the nonbeliever, the Passion of Jesus – the betrayals, the torture, the state-sponsored murder of God's only Son, and the empty tomb on the third day – makes no sense at all. And even to the believer, or at least to some of them, it can be incomprehensible as well.

But for the men and women of On Fire, Christ's sacrifice isn't about the logic of this world. Nor is their Easter Sunday celebration. The reason they will be there for each other and their Lord

is the reason they believe He was and is there for us. For them, for all believers, “it isn’t a matter of reason; finally, it’s a matter of love.”⁸⁵ ⁸⁶



Justin R Walker, District Judge
United States District Court

4/11/2020

⁸⁵ Robert Bolt, *A Man for All Seasons* 141.

⁸⁶ JRW, SDR, & PBB.