

No. 21-2732

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

SOLID ROCK BAPTIST CHURCH, INC., ET AL.,
Plaintiffs-Appellants,

v.

GOVERNOR PHILIP D. MURPHY, ET AL.,
Defendants-Appellees.

On Appeal from the U.S. District Court for the
District of New Jersey,
Civ. No. 1:20-cv-6805-RMB (Hon. Renée Marie Bumb, U.S.D.J.)

**Brief of Appellants Solid Rock Baptist Church; Bible Baptist Church of
Clementon; Andrew Reese; Charles Clark, Jr., and Charles Clark III**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, Plaintiffs-Appellants Solid Rock Baptist Church and Bible Baptist Church of Clementon represent that they do not have any parent entities and do not issue stock.

/s/ Brian Tome

Brian Tome, Esq.

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INTRODUCTION

The three individual pastors and two church appellants were virtually foreclosed from engaging in gathering for indoor religious worship as a result of the appellees' issuance and enforcement of the Governor's pandemic executive orders that prohibited appellants from gathering indoors for religious worship during the effective date of the COVID-19 "emergency." The three individual Plaintiffs, pastors of the two Plaintiff churches, were charged multiple times by the seven borough Defendants for violating New Jersey Executive Order 107 ("EO 107") as further clarified by New Jersey Administrative Order ("AO") No. 2020-4, issued by Defendant Colonel Callahan, by facilitating gatherings of more than 10 people for religious worship. The executive and administrative orders' restrictions against gathering for religious worship were enforced even while other, secular, gatherings were freely exempted from the numerical restrictions.

The appellants sought a preliminary injunction from being prohibited from meeting for religious worship. The District Court denied the motion for a preliminary injunction. The appellants also sought a permanent injunction and a declaration that the executive orders, on their face and as applied to appellants, violated appellants' free exercise of religion as protected by the U.S. and N.J. Constitutions. Finally, Plaintiffs sought their costs and attorney fees pursuant to 42

U.S.C. § 1988. The District Court abstained from the case pursuant to the *Younger v. Harris* doctrine and dismissed the action as being moot.

JURISDICTIONAL STATEMENT

The District Court had jurisdiction over Appellants' lawsuit under 28 U.S.C. §§ 1331 and 1343. Appellants filed their initial Complaint on June 3, 2020, and Amended Complaint on September 21, 2020, seeking injunctive and declaratory relief from Appellees' executive and enforcement conduct, alleging claims of violation by the executive and administrative orders of Appellants' rights to free exercise and establishment of religion, to assemble, and equal protection as protected by the United States Constitution and the New Jersey Constitution. *Appx 36, 49-54, 132, 149-158*. Accordingly, the U.S. District Court for the District of New Jersey's subject matter jurisdiction was proper under 28 U.S.C. §§ 1331 and 1343.

This Court has jurisdiction pursuant to 28 U.S.C. § 1291. Appellees moved to dismiss the action and the District Court dismissed the action on August 16, 2021. *Appx 31-33*. Appellants filed their Notice of Appeal on September 15, 2021, appealing the final order of the District Court below. *See Appx. 1*. Accordingly, this Court has proper jurisdiction over the matter pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

Issue #1 A. Whether Appellants' requests for declaratory relief are moot simply because the Governor temporarily rescinded the unconstitutional executive orders. *Appx. 8, 18-21.*

Issue #1 B. Whether the issue of Appellant's claims for attorney's fees and costs are moot simply because the Governor temporarily rescinded the unconstitutional executive orders. *Appx. 8, 18-21.*

Issue #2. Whether the District Court's decision to abstain from hearing the merits of Appellant's case applying the *Younger* doctrine was reversible error. *Appx. 8, 21-22.*

STATEMENT OF RELATED CASES

This case has not previously been before this Court.

Currently pending in the U. S. District Court for the District of New Jersey is the related case of: *Robinson v. Murphy*, 2:20-cv-05420.

Related cases pending before New Jersey state courts are:

Clementon Borough Municipal Court:

Clementon v. Pastor Andrew Reese--SC 2020 006154, 006159, 006181, 006182, 006160, 006183.

West Berlin Borough Municipal Court:

Berlin v. Charles Clark, Jr.--SC20204203, 20203429, 20204212, 20204213.

Berlin v. Charles Clark III--SC20203760, 20204201, 20203428, 20204211, 20204214.

STATEMENT OF THE CASE

Appellants filed their initial Complaint on June 3, 2020, and Amended Complaint on September 21, 2020, in the U.S. District Court for the District of New Jersey, to challenge restrictions imposed upon them by Governor Philip D. Murphy as enforced by other named State of New Jersey officials in response to the COVID-19 pandemic. *Appx. 35-37, 133-135, 26, 29.* These Executive Orders prohibited individuals from gathering indoors for religious worship with more than ten (10) people, despite the strict infection mitigation measures implemented by Appellants to protect their worshippers. *Appx. 36-37, 79-92, 133-135.*

The Amended Complaint added the seven local defendants involved in enforcing the Executive Orders against Appellants and prosecuting the individual pastor Appellants for alleged violation of the Executive and Administrative Orders prohibiting gathering indoors with more than a specific number of people for religious worship. *Appx. 132-133, 138-140, 142-144, 148.* Appellants sought injunctive and declaratory relief from Appellees' executive and enforcement conduct, alleging claims of violation by the executive and administrative orders of Appellants' rights to free exercise and establishment of religion, to assemble, and equal protection as protected by the United States Constitution and the New Jersey Constitution. *Appx. 35, 49-54, 132, 149-158.*

Appellees moved to dismiss the action and the District Court dismissed the action on August 16, 2021. *Appx. 31-32*. Appellants now appeal this final order. *Appx. 33-34*.

Bible Baptist Church of Clementon

Plaintiff Bible Baptist Church of Clementon (“Bible Baptist”) has been operating since 1886 in Clementon, New Jersey, where its constituents regularly gather for in-person religious services multiple times per week. *Appx. 142* (Amed. Comp.). Bible Baptist is a small congregation, normally having 70 people at its weekly leadership assembly (seating capacity is 75). *Appx. 143-144*. Bible Baptist’s pastor, Plaintiff Andrew Reese, along with the church’s congregants, “believe that a physical assembly in one place on the Lord’s day, for mid-week services, revivals, other special religious worship meetings, and for Christian fellowship is an essential part of their worship and that failure to assemble is a sin in violation of God’s commands as they interpret the *Holy Bible*.” *Appx. 142*. In fact, Bible Baptist places such an emphasis on in-person attendance at services, that membership is automatically terminated if a member goes six months without attending at least one regular worship service. *Appx. 143*. Despite this belief, from March 23, 2020 until May 20, 2020, Bible Baptist did not hold indoor church services, but instead, livestreamed services online. *Appx. 143*.

On May 20, 2020, while EO 107's ban on non-essential gatherings of more than 10 people was still in effect, Bible Baptist held its mid-week worship service with more than 10 people—all wearing masks--in the sanctuary. *Appx. 143*. Although Bible Baptist's sanctuary has a seating capacity of 75 people, in preparation for the service, the church lowered the maximum capacity to 38 people to allow for social distancing. *Appx. 143*. The sanctuary was also fully sanitized. *Appx. 143*. The following day, on May 21, 2020, Clementon Police Chief Charles Grover issued a criminal complaint to Pastor Reese, charging him with "opening Bible Baptist Church on May 20, 2020 and facilitating a gathering of more than 10 people on the premises of the Church in violation of Executive Order 107 in violation of APP. A:9-50." *Appx. 144*.

After fully sanitizing all surfaces in the sanctuary, Bible Baptist held two religious worship services indoors with more than 10 people in the sanctuary on Sunday, May 24, 2020. *Appx. 144*. The sanctuary was sanitized between the services and all individuals in attendance, other than families, sat at least 6-feet apart and wore a mask. *Appx. 144*. On that day, Clementon police officers arrived at the church before each of the two services. Although the police officers did not disrupt either service, following the services, Chief Grover once again swore out a criminal complaint charging Pastor Reese with violating EO 107. *Appx. 144*. Pastor Reese received multiple tickets. Defendant Jill S. Mayer, as Acting Camden County

Prosecutor, instructed Defendants Weaver, Grover, and Cohen to not entertain plea negotiations with Pastor Reese regarding the prosecution of the criminal complaint in Clementon Municipal Court. *Appx. 144.*

The charges against Pastor Reese are still pending. Bible Baptist, and Pastor Reese contend that their First Amendment rights to freely assemble and exercise their religion by holding indoor worship services remain impeded by the threat of prosecution and imprisonment under the Executive Orders.

Solid Rock Baptist Church of West Berlin

Plaintiff Solid Rock Baptist Church of West Berlin (“Solid Rock”) has been operating since 1981 in Berlin, New Jersey, where its constituents regularly gather for in-person religious services multiple times per week. *Appx. 145-146* (Amed. Comp.). Solid Rock is co-pastored by Plaintiff Charles Clark, Jr. and his son, Plaintiff Charles Clark, III. *Appx. 145-146.* The Solid Rock sanctuary is able to seat up to 1000 people. *Appx. 146.*

Solid Rock and its pastors believe that “physical assembly in one place on the Lord’s day, for mid-week services, revivals, and other special religious worship meetings is an essential part of their worship and that failure to assemble is a sin in violation of God’s commands as they interpret the Holy Bible.” *Appx. 146.* Solid Rock holds in-person attendance at services to such a high degree of importance that membership is subject to automatic termination if an individual does not attend at

least one service in a four-month period. *Appx. 146*. Indeed, Solid Rock has terminated the membership of several individuals for nonattendance. *Appx. 146*. Nonetheless, to comply with the Governor's orders, from March 23, 2020 until May 24, 2020, Solid Rock did not hold any indoor worship services, but instead livestreamed services online. *Appx. 146*.

On May 15, 2020, Pastor Clark notified Governor Murphy, by letter, that Solid Rock intended to resume indoor worship services on May 24, 2020. *Appx. 146*. In the letter, Pastor Clark stated “[w]e will be safe, sanitized, and use social distancing,” but also requested that the Governor declare churches to be “essential” businesses. *Appx. 146*. On May 18, 2020, counsel for Solid Rock wrote to Governor Murphy's office to express their constitutional concerns regarding the restrictions imposed by EO 107 and to inform the Governor that Solid Rock intended to open for indoor services on May 24, 2020. *Appx. 147*. Solid Rock's counsel requested confirmation from the Governor that churches could resume indoor services, but the Governor's office did not respond to either letter. *Appx. 147*. Instead, on May 23, 2020, Camden County public safety officers allegedly installed cameras outside Solid Rock. *Appx. 147*.

On Sunday, May 24, 2020, Solid Rock held two religious worship services indoors with more than 10 people in the sanctuary. *Appx. 147*. Solid Rock, which is a large congregation that has a sanctuary that can normally hold 1000 people,

permitted no more than 250 people in the sanctuary to comply with social distancing requirements. *Appx. 147.* Every attendee had their temperature checked with a touchless thermometer and those with a temperature of 100.4° and above were not permitted to enter the building. *Appx. 147.* Every individual attending, other than families, sat at least 6-feet apart and wore a mask. Members were also required to make reservations to attend the Sunday services so that the church could enforce its social distancing protocols. *Appx. 147.*

Police officers did not disrupt either service, but on Monday, May 25, 2020, Lt. Michael Scheer of the Berlin Borough Police Department issued criminal complaints to both Pastor Clark, Jr. and Pastor Clark, III, charging them with “opening Solid Rock Church [sic.] on 5/24/20 @ 10 am [and 5:30pm] facilitating a gathering over 10 people in violation of EO 107. In violation of APP. A:9-50.” *Appx. 147.* Each Pastor Clark has eventually received five citations for successive instances of holding worship services in violation of the Executive Orders.

Defendant Jill S. Mayer, as Acting Camden County Prosecutor, instructed Defendants Miller, Wilkinson, and De Michelle to not entertain plea negotiations with Pastor Clark, Jr., and Clark III regarding the prosecution of the criminal complaint in Clementon Municipal Court. *Appx. 148.*

The charges against Pastor Clark, Jr. and Pastor Clark, III are still pending. Solid Rock, Pastor Clark, Jr., and Pastor Clark, III contend that their First

Amendment rights to freely assemble and exercise their religion by holding indoor worship services remain impeded by the threat of prosecution and imprisonment under the Executive Orders.

STANDARD OF REVIEW

This Court reviews a District Court's dismissal of a complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of jurisdiction *de novo*. *In re Horizon Healthcare Servs. Data Breach Litig.*, 846 F.3d 625, 632 (3d Cir. 2017). As such, because each issue was dismissed for lack of jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1) the standard of review for each issue is *de novo*. Lastly, because the underlying dismissal motions were facial, rather than factual, attacks on jurisdiction, the Court considers the allegations of the complaint as true. *Id.*

SUMMARY OF THE ARGUMENT

The case is not moot because Plaintiffs' allegations fall within exceptions to the mootness doctrine. There is a reasonable likelihood that Defendants will again issue and enforce further COVID-19 executive and administrative orders that will restrict Plaintiffs' religious, assembly, and equal protection rights as guaranteed by the U.S. and New Jersey Constitutions. In addition, Plaintiffs continue to suffer from the effects of the executive order under which they received criminal citations that puts them at risk for conviction, fines, and imprisonment for purported violation of unconstitutional executive and administrative orders. In addition, the District Court's dismissal of the case failed to consider the still active claim for costs and attorneys' fees.

The District Court should not have abstained from the case pursuant to the *Younger v. Harris* abstention doctrine because Plaintiffs' allegations, taken as true as they must be, places the case in exceptions to the *Younger* doctrine. The criminal proceedings against Plaintiff Pastors are motivated by a desire to harass, conducted in bad faith by Defendants, and based upon an executive order that was flagrantly and patently violative of express U.S. and New Jersey constitutional prohibitions.

ARGUMENT

I. Plaintiffs’ challenges to Defendants’ restrictions on their religious, assembly, and equal protection rights are not moot.

The District Court erred in dismissing Appellants’ case as moot because Executive Order 107 which they originally challenged was rescinded by successive executive orders. A case is moot only if a party lacks “an actual injury traceable to the [defendant] that is likely to be redressed by a favorable decision.” *Alpha Painting & Constr. Co. v. Del. River Port Auth.*, 822 F. App’x 61, 66 (3d Cir. 2020) (internal quotations omitted).

The Supreme Court has held that the “burden of demonstrating mootness ‘is a heavy one.’” *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979) (citing *U.S. v. W. T. Grant Co.*, 345 U.S. 629, 632-33 (1953)). “Simply stated, a case is moot when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Powell v. McCormack*, 395 U.S. 486, 496 (1969). A case may become moot because “it can be said with assurance that ‘there is no reasonable expectation . . .’ that the alleged violation will recur,” and “interim relief or events have completely and irrevocably eradicated the effects of the alleged violation.” *Davis*, 440 U.S. at 631 (citations omitted). In this case, Defendants did not meet either of these conditions, so the District Court erred in dismissing the case for mootness.

A. There is not only a reasonable expectation that Defendants will again violate Plaintiffs’ claimed constitutional rights, Plaintiff Pastors continue to be harmed by the constitutionally flawed EO 107.

Although Plaintiffs Solid Rock and Bible Baptist may not at the moment be subject to Appellees’ executive orders in effect at the time the Amended Complaint was filed, the Plaintiff Pastors Clark, Jr., Clark III, and Reese continue to this date to be harmed by the constitutionally flawed EO 107. Defendants continue to prosecute them in state courts for their alleged violation of the Order. “[T]he question is not whether the precise relief sought at the time the application for an injunction was filed is still available. The question is whether there can be any effective relief.” *Freedom from Religion Found. Inc. v. New Kensington Arnold Sch. Dist.*, 832 F.3d 469, 476 (3d Cir. 2016). The District Court’s refusal to rule as to the constitutionality of EO 107 leaves Appellants Clark and Reese in criminal jeopardy for their alleged violation of what they contend is an unconstitutional executive order.

Accepting the allegations of the Amended Complaint as true, Plaintiff Pastors are at risk for conviction and penalties for violating EO 107. Plaintiffs’ claims thus are not moot because Plaintiffs “have an actual injury which is likely to be redressed by a favorable judicial decision” if this Court grants Plaintiffs’ requested relief of declaring EO 107 to be unconstitutional. *United States v. Mercurris*, 192 F.3d 290, 293 (2d Cir. 1999).

Federal courts reviewing COVID-19 executive orders across the nation have had no difficulty in deciding that, although the orders may come and go, they may also come again. Therefore, the fact that the orders have been revoked, modified, superseded, suspended, or defendants have otherwise voluntarily ceased their enforcement does not mean original claims have been mooted. As a matter of obvious fact, Defendants have not voluntarily ceased their conduct. Plaintiff Pastors still stand charged with violating EO 107. Defendant prosecutors continue to press their cases before the state courts, and Plaintiff Pastors are still at risk of being fined or jailed for their violation of an executive order they allege is unconstitutional under the First Amendment. The conduct complained of has not ceased and is not moot.

When the Supreme Court was considering the challenge by the Roman Catholic Diocese of Brooklyn, New York, to the New York Governor's limits on indoor religious worship, it found it clear that the case remained alive.

It is clear that this matter is not moot. *See FEC v. Wis. Right to Life, Inc.*, 551 U. S. 449, 462, 127 S. Ct. 2652, 168 L. Ed. 2d 329 (2007); *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. 167, 189, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000). And injunctive relief is still called for because the applicants remain under a constant threat that the area in question will be reclassified as red or orange. *See, e.g., Susan B. Anthony List v. Driehaus*, 573 U. S. 149, 158, 134 S. Ct. 2334, 189 L. Ed. 2d 246 (2014). The Governor regularly changes the classification of particular areas without prior notice. If that occurs again, the reclassification will almost certainly bar individuals in the affected area from attending services before judicial relief can be obtained. . . . The applicants have made the showing needed to obtain relief, and there is no reason why they should bear the risk of suffering further irreparable harm in the event of another reclassification.

*. *. *

Even our dissenting colleagues do not suggest this case is moot or otherwise outside our power to decide.

Roman Catholic Diocese v. Cuomo, 208 L.Ed.2d 206, 210-11, 214 (U.S. 2020).

The Ninth Circuit Court of Appeals also explained its decision that a mere change in the governor’s executive order concerning religious worship does not moot the plaintiff’s constitutional challenge to the order.

Although the Directive is no longer in effect, we held in an order denying the State’s motion to dismiss that Calvary Chapel’s case is not moot. Governor Sisolak could restore the Directive’s restrictions just as easily as he replaced them, or impose even more severe restrictions. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000); *see also Elim Romanian Pentecostal Church v. Pritzker*, 962 F.3d 341, 344-45 (7th Cir. 2020). In fact, Governor Sisolak has issued numerous emergency directives after Directive 021. For example, Directive 035, which is currently in effect, limits houses of worship to “the lesser of 25% of the listed fire code capacity or 50 persons.” In contrast, it imposes only a 25% limit on commercial entities such as casinos; bowling alleys, arcades, miniature golf facilities, amusement parks, and theme parks; restaurants, food establishments, breweries, distilleries, and wineries; museums, art galleries, zoos, and aquariums; and gyms, fitness facilities, and fitness studios. (Reference omitted). Although the only directive before us today is the Directive, we emphasize that all subsequent directives are subject to the same principles outlined in this opinion, and that many of the issues we identify in the Directive persist in Directive 035.

Calvary Chapel Dayton Valley v. Steve Sisolak, 982 F.3d 1228, 1230, n. 1 (9th Cir. Dec. 15, 2020).

The Seventh Circuit also held that the defendant had not carried its burden of persuading the Court that the more severe restrictions upon churches would never recur.

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

* * *

The list of criteria for moving back to Phase 2 (that is, replacing the current rules with older ones) shows that it is not “absolutely clear” that the terms of Executive Order 2020-32 will never be restored. It follows that the dispute is not moot and that we must address the merits of plaintiffs’ challenge to Executive Order 2020-32 even though it is no longer in effect.

Elim Romanian Pentecostal Church v. Pritzker, 962 F.3d 341, 344-45 (7th Cir. 2020).

While it is true that the executive orders governing indoor religious worship have changed, repeatedly, since the inception of this action, and restrictions upon Plaintiff Churches’ and Pastors’ First Amendment rights may have been lifted under newer executive and administrative orders, the whirlwind course of the pandemic still poses the very real risk that restrictions on religious worship may be reinstated, whether by closures, numerical limits, masking requirements, or vaccination and

testing mandates.¹ The Governor’s emergency powers to reinstate restrictions on religious gatherings still place Plaintiffs at risk.

Voluntary cessation of wrongful behavior does not moot a case if a party voluntarily ceases that behavior just to continue the same behavior, but in a new form. *See Century 21 Real Estate Corp. v. Lendingtree, Inc.*, 425 F.3d 211, 217 (3d Cir. 2005) (the defendant’s voluntary cessation of its infringement of the plaintiff’s trademark on defendant’s website did not moot the case because infringement continued on defendant’s website with different language).

Hugo Neu Corp. v. Freeman Family LLC, No. 17-cv-00373-MCA-ESK, 2020 U.S. Dist. LEXIS 130129, at *8-9 (D.N.J. July 23, 2020).

A court may decline to hear a matter for mootness only if the defendant has shown that he is not reasonably expected to engage in the conduct again. “A case might become moot if subsequent events made it absolutely clear that the allegedly

¹ *See, Cty. of Butler v. Wolf*, Civil Action No. 2:20-cv-677, 2020 U.S. Dist. LEXIS 93484, at *9 (W.D. Pa. May 28, 2020) (“[T]he Court holds that merely moving from one phase to another, less restrictive phase, will not automatically render moot Plaintiffs’ claims relating to the business shutdown or re-opening requirements, nor will it moot their First Amendment claims. To the extent that Plaintiffs can plausibly assert that the continuing restrictions infringe upon protected liberties, they may continue to pursue declaratory relief”) and *Hopkins Hawley LLC v. Cuomo*, No. 20-cv-10932 (PAC), 2021 U.S. Dist. LEXIS 24580, at *5 n.5 (S.D.N.Y. Feb. 9, 2021) (Although the Plaintiffs point out that Governor Cuomo may soon roll back some of the restrictions challenged on this Preliminary Injunction motion, the matter is not moot because Governor Cuomo has not yet provided all the relief Plaintiffs seek. Even if he did, however, the matter would not be moot as Plaintiffs are under a “constant threat” of the restrictions being reinstated.”)

wrongful behavior could not reasonably be expected to recur.” *United States v. Concentrated Phosphate Export Assn., Inc.*, 393 U.S. 199, 203 (1968).

It was the Defendants’ burden to demonstrate that the Governor’s restrictions on religious worship is unlikely to reoccur. “The ‘heavy burden of persuading’ the court that the challenged conduct cannot reasonably be expected to start up again lies with the party asserting mootness.” *Friends of the Earth, Inc. v. Laidlaw Env’tl. Servs. (TOC), Inc.*, 528 U.S. 167, 189, (2000). The District Court erred in holding that Defendants carried their heavy burden.

The Plaintiff Pastors’ constitutional rights continue to be infringed upon by EO 107 and the current progress of the pandemic and its multiple infection variants make it reasonable to believe that restrictions on Plaintiff Churches ability to gather for religious worship could be reinstated. Plaintiffs require a ruling from The District Court declaring Defendants’ conduct unconstitutional and enjoining further enforcement of EO 107 or similar orders. That is the only relief that will provide concrete relief for Plaintiffs’ actual and ongoing injury.

B. The District Court erred in dismissing the case as moot without considering the still live issue of attorneys’ fees.

In addition to injunctive and declaratory relief, the Plaintiffs’ Amended Complaint also seeks costs and attorneys’ fees. Even if the District Court did not err in dismissing the case for mootness and abstaining under *Younger*, it did err in not

separately considering Plaintiffs' claims for costs and fees. *See Steffel v. Thompson*, 415 U.S. 462, 462-63 (1974); *see also Powell*, 395 U.S. at 498.

Since the filing of their initial Complaint challenging EO 107, Defendants have rescinded all COVID-19 orders restricting religious worship. In that regard, Plaintiffs have obtained relief and are again able to meet without numerical restrictions. Since Plaintiffs obtained their requested relief through the filing of this case, they may be entitled to their attorneys' fees under 42 U.S.C. § 1988.

As the Supreme Court held in *Powell*, "remaining live issues supply the constitutional requirement of a case or controversy." *Powell* 395 U.S. at 497; *see also, e.g., Hood v. Keller*, 229 F. App'x 393, 400-01 (6th Cir. 2007) (Claims for attorneys' fees pursuant to 42 U.S.C. §1988 are not rendered moot simply because the remainder of the case may not present a live controversy.) Under § 1988, it is clear that attorneys fee awards are available to parties even though they enforce their rights by means of a consent decree or without actually obtaining formal judicial relief. *See, e.g., Hanrahan v. Hampton*, 446 U.S. 754, 756 (1980); *and Doe v. Busbee*, 684 F.2d 1375, 1379 (11th Cir.1982).

The District Court erred in dismissing the case as moot without considering the still live issues of costs and attorneys' fees.

II. The District Court erred in abstaining from hearing this case pursuant to the *Younger* doctrine because Plaintiffs' case meets exceptions to the doctrine.

The District Court's abstention under the *Younger v. Harris*, 401 U.S. 37 (1971), doctrine was error because Plaintiffs' claims fell within at least one of the three exceptions that permitted the court to become involved in an ongoing state court matter. The Supreme Court has developed three exceptions to the *Younger* abstention doctrine:

(1) the "state proceeding is motivated by a desire to harass or is conducted in bad faith," *Huffman*, 420 U.S. at 611; (2) the "challenged provision is flagrantly and patently violative of express constitutional prohibitions," *Moore v. Sims*, 442 U.S. 415, 423, 60 L. Ed. 2d 994, 99 S. Ct. 2371 (1979); and (3) there is "an extraordinarily pressing need for immediate equitable relief." *Kugler v. Helfant*, 421 U.S. 117, 124-25, 44 L. Ed. 2d 15, 95 S. Ct. 1524 (1975).

W.K. by W.K. v. N.J. Div. of Developmental Disabilities, 974 F. Supp. 791, 796 (D.N.J. 1997).

Counts One, Two, Three, and Five of the Amended Complaint challenge the Governor's executive orders as flagrantly violating Plaintiffs' First and Fourteenth Amendments rights. The Amended Complaint also alleges bad faith by the direct involvement of Defendant prosecutors refusing to entertain plea negotiations with the Pastor Plaintiffs in the prosecution of their local citations for their alleged violation of the Governor's Executive Order. *Appx. 29, 46, 51.*

Despite “the extensive guidance [the Supreme] Court already gave,”² concerning the unconstitutionality of COVID-19 restrictions on First Amendment right to free exercise of religion, Defendants to date have not dismissed the charges filed against the three Plaintiff Pastors, and in bad faith Defendant Prosecutors have refused to entertain plea negotiations with Plaintiff Pastors. Plaintiffs require discovery to determine whether Defendant Prosecutors acted independently or in conspiracy with Defendant Office of the Attorney General or Governor Murphy to refuse plea arrangements, or to initiate prosecution in the first place.

The District Court acknowledged being disturbed by Plaintiffs’ allegations of the Defendants’ bad faith in targeting them for prosecution. “Plaintiffs’ allegations are troubling—particularly that Plaintiffs, unlike others, were ‘targeted’ by the setting up of cameras and the alleged prosecutor’s directive not to entertain any plea discussion typically afforded to other defendants.” *Solid Rock Baptist Church v. Murphy*, No. 20-6805 (RMB/MJS), 2021 U.S. Dist. LEXIS 154636, at *19 (D.N.J. Aug. 16, 2021). Although Plaintiffs did not ask the District Court to become involved in any state court proceeding, that court nevertheless abstained from declaring the constitutionality of EO 107 on its face—the task Plaintiffs asked it to

² *S. Bay United Pentecostal Church v. Newsom*, 141 S. Ct. 716, 719 (2021), *vacated and remanded*, 141 S. Ct. 2563 (2021).

perform—because the court believed itself bound to abstain from involving itself in the pending state court proceedings.

The District Court erred in abstaining from declaring whether EO 107 was unconstitutional. Taken as true, the allegations of the Amended Complaint and their logical inferences demonstrate a state proceeding motivated by a desire to harass or and conducted in bad faith,” based upon an executive order that was flagrantly and patently violative of express constitutional prohibitions. Plaintiffs’ claims therefore fall within the exceptions to the *Younger* doctrine and the District Court erred in dismissing.

CONCLUSION

For the foregoing reasons, the District Court’s ruling should be reversed and the case remanded.

Dated this 13th day of December 2021.

Respectfully submitted,

BIBLE BAPTIST CHURCH
SOLID ROCK BAPTIST CHURCH
PASTOR ANDREW REESE
PASTOR CHARLES CLARK, JR.
PASTOR CHARLES CLARK III

By their attorneys,

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** Pro Hac Vice
Motion forthcoming*

Attorneys for Plaintiffs-Appellants

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT,
TYPEFACE, AND TYPE-STYLE REQUIREMENTS**

I hereby certify that the following statements are true:

1. This brief complies with the type-volume limitations imposed by Federal Rule of Appellate Procedure 32(a)(6) and (7). It contains 4,982 words, excluding the parts of the brief exempted by Federal Rule 32(f) and by Local Rule 29.1(b).

2. This brief complies with the typeface and typestyle requirements of Federal Rule 32(a)(5) and 32(a)(6). It has been prepared in a proportionally-spaced typeface using Microsoft Word for Mac, Version 16.16.27 in 14-point Times New Roman font. This brief is free of Viruses.

Executed this 13th day of December 2021.

/s/ Brian Tome

Brian Tome, Esq.

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I filed the foregoing document with the Clerk of the Court, using the CM/ECF system, which will automatically send notification and a copy of the brief to counsel who have appeared for the parties and are CM/ECF participants.

Executed this 13th day of December 2021.

/s/ Brian Tome

Brian Tome, Esq.

CERTIFICATE OF BAR MEMBERSHIP

I, Brian D. Tome, hereby certify, that I have been admitted to practice law in the State of New Jersey. The undersigned's attorney number is 033272008 and date of admission was December 3, 2008.

Executed this 13th day of December 2021.

/s/ *Brian Tome*
Brian Tome, Esq.

No. 21-2732

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

SOLID ROCK BAPTIST CHURCH, INC., ET AL.,
Plaintiffs-Appellants,

v.

GOVERNOR PHILIP D. MURPHY, ET AL.,
Defendants-Appellees.

On Appeal from the U.S. District Court for the
District of New Jersey,
Civ. No. 1:20-cv-6805-RMB (Hon. Renée Marie Bumb, U.S.D.J.)

**Appendix to Brief of Appellants Solid Rock Baptist Church; Bible
Baptist Church of Clementon; Andrew Reese; Charles Clark, Jr., and
Charles Clark III**

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

SOLID ROCK BAPTIST CHURCH, a
New Jersey not-for-profit corporation; *et al.*,

Plaintiffs,

Civil No. 1:20-cv-6805-RMB-JS

v.

PHILIP D. MURPHY, Governor of the State
of New Jersey, in his official capacity, *et al.*,

Defendants.

NOTICE OF APPEAL

Plaintiffs Solid Rock Baptist Church, Charles Clark, Jr., Charles Clark III,
Bible Baptist Church, and Andrew Reese, by and through counsel, hereby appeal to

the Third Circuit of the United States Court of Appeals from the district court's Order and Opinion, both entered August 17, 2021, Dkt. Nos. 79 and 80,

1. Granting Defendants' Motions to Dismiss the Amended Complaint [Dkt. Nos. 55, 57, 58, 59], and

2. Denying Plaintiffs' motion for reconsideration of this Court's Order [Dkt. No. 32] denying their Emergency Motion for a Preliminary Injunction [Dkt. No. 12] in their challenge to defendant Governor Murphy's coronavirus pandemic restrictions.

Dated: September 15, 2021

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

SOLID ROCK BAPTIST CHURCH, a
New Jersey not-for-profit corporation; *et al.*,

Civil No. 1:20-cv-6805-RMB-JS

Plaintiffs,

v.

PHILIP D. MURPHY, Governor of the State
of New Jersey, in his official capacity, *et al.*,

**CERTIFICATE OF
SERVICE PURSUANT
TO F.R.A.P. 25(c) AND
L.A.R. 113.4**

Defendants.

The undersigned counsel, Brian Tome, Esq., duly admitted to practice before the United States District Court for the District of New Jersey, hereby certifies that the Notice of Appeal filed on behalf of all Plaintiffs in connection

with the District Court’s August 17, 2021, Opinion and Order (Dkt. Nos. 79 and 80) has been electronically filed and service of said Notice of Appeal has been electronically provided to the counsel of record of all parties in the above-captioned matter pursuant to Federal Rule of Appellate Procedure 25(c) and Local Rule of Appellate Procedure 113.4.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Respectfully submitted,

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[Dkt. No. 12]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

SOLID ROCK BAPTIST CHURCH;
BIBLE BAPTIST CHURCH OF
CLEMENTON; ANDREW REESE;
CHARLES CLARK, JR.; and CHARLES
CLARK III,

Plaintiffs,

v.

PHILIP D. MURPHY, Governor of
the State of New Jersey; GURBIR
S. GREWAL, Attorney General of
the State of New Jersey;
PATRICK J. CALLAHAN,
Superintendent of State Police
and State Director of Emergency
Management,

Defendants.

Civ. No. 20-6805(RMB/JS)

ORDER

THIS MATTER comes before the Court upon an Emergency Motion for a Preliminary Injunction [Dkt. No. 12], filed by Plaintiffs Solid Rock Baptist Church, Bible Baptist Church of Clementon, Pastor Andrew Reese, Pastor Charles Clark, Jr., and Pastor Charles Clark, III (collectively, "Plaintiffs"), seeking relief from the Executive Orders promulgated and enforced by New Jersey Governor Philip D. Murphy, New Jersey Attorney General Gurbir S. Grewal, and the New Jersey Superintendent of State Police and

State Director of Emergency Management, Colonel Patrick J. Callahan (collectively, the "State" or "Defendants").

For the reasons set forth in the accompanying Opinion of the same date,

IT IS on this 20th day of August 2020, hereby

ORDERED that Plaintiffs' Emergency Motion for a Preliminary Injunction [Dkt. No. 12] is **DENIED WITHOUT PREJUDICE**; and it is further

ORDERED that Plaintiffs are permitted leave to file an amended complaint, within thirty (30) days, if they wish to pursue a claim for selective enforcement.

s/Renée Marie Bumb
HON. RENÉE MARIE BUMB
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

SOLID ROCK BAPTIST CHURCH; BIBLE BAPTIST CHURCH
OF CLEMENTON; ANDREW REESE; CHARLES CLARK, JR.;
and CHARLES CLARK III,

Plaintiffs,

v.

PHILIP D. MURPHY, Governor of the State of New Jersey;
GURBIR S. GREWAL, Attorney General of the State of New Jersey;
PATRICK J. CALLAHAN, Superintendent of State Police and State
Director of Emergency Management; JILL S. MAYER, Camden
County Prosecutor for Clementon Borough; THOMAS J. WEAVER,
Mayor of Clementon Borough; CHARLES GROVER, Chief of
Clementon Borough Police Department; RICK MILLER, Mayor of
Berlin Borough; MILLARD WILKSON, Chief of Berlin Borough
Police Department; RICHARD A. DE MICHELE, Prosecutor for
Berlin Borough; CHERYL R. HENDLER COHEN, Prosecutor for
Clementon Borough,

Defendants.

Civ. No. 20-6805
(RMB/MJS)
ORDER

RENÉE MARIE BUMB, UNITED STATES DISTRICT JUDGE:

THIS MATTER comes before the Court upon Plaintiffs’ Motion for Reconsideration [Dkt. No. 32] and Defendants’ Motions to Dismiss. [Dkt. Nos. 55, 57, 58, 59]. Plaintiffs’ Motion will be **DENIED**, and Defendants’ Motions will be **GRANTED**.

For the reasons set forth in the accompanying Opinion of the same date,

IT IS on this 16th day of **August 2021**, hereby:

ORDERED that Plaintiffs’ Motion for Reconsideration be **DENIED** and Defendants’ Motions to Dismiss be **GRANTED**.

/s/ Renée Marie Bumb
HON. RENÉE MARIE BUMB
UNITED STATES DISTRICT JUDGE

[Dkt. Nos. 50, 55, 57, 58, 59]

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

SOLID ROCK BAPTIST CHURCH; BIBLE BAPTIST
CHURCH OF CLEMENTON; ANDREW REESE; CHARLES
CLARK, JR.; and CHARLES CLARK III,

Plaintiffs,

v.

PHILIP D. MURPHY, Governor of the State of New Jersey;
GURBIR S. GREWAL, Attorney General of the State of New
Jersey; PATRICK J. CALLAHAN, Superintendent of State Police
and State Director of Emergency Management; JILL S. MAYER,
Camden County Prosecutor for Clementon Borough; THOMAS J.
WEAVER, Mayor of Clementon Borough; CHARLES GROVER,
Chief of Clementon Borough Police Department; RICK MILLER,
Mayor of Berlin Borough; MILLARD WILKSON, Chief of Berlin
Borough Police Department; RICHARD A. DE MICHELE,
Prosecutor for Berlin Borough; CHERYL R. HENDLER
COHEN, Prosecutor for Clementon Borough,

Defendants.

Civ. No. 20-6805
(RMB/MJS)

OPINION

RENÉE MARIE BUMB, UNITED STATES DISTRICT JUDGE:

Plaintiffs Solid Rock Baptist Church of West Berlin, New Jersey, and Bible Baptist Church of Clementon, New Jersey, along with their respective pastors, move for reconsideration of this Court’s Order [Dkt. No. 32] denying their Emergency Motion for a Preliminary Injunction. [Dkt. No. 12]. Additionally, Defendants move to dismiss the Amended Complaint [Dkt. No. 33], arguing that the claims are moot and that the Court should abstain from addressing Plaintiffs’ ongoing prosecution in state court. [Dkt. Nos. 55,

57, 58, 59]. As the legal principles for these pending motions are both identical and dispositive, the Court will address these matters in one opinion. For the reasons set forth below, Plaintiffs' Motion for Reconsideration will be **DENIED** and Defendants' Motions to Dismiss will be **GRANTED**.

I. Factual Background and Procedural History

a. Initial Complaint

Plaintiffs Solid Rock Baptist Church of West Berlin ("Solid Rock"), Bible Baptist Church of Clementon ("Bible Baptist"), Solid Rock Pastors, Charles Clark, Jr. and Charles Clark III, and Bible Baptist Pastor, Andrew Reese, initiated this matter by filing a complaint on June 3, 2020 [Dkt. No. 1] in this Court. Their complaint was filed to challenge restrictions imposed by New Jersey Governor Philip D. Murphy in response to the worldwide COVID-19 pandemic, and named Governor Murphy, New Jersey Attorney General Gurbir S. Grewal, and New Jersey Superintendent of State Police and State Director of Emergency Management Colonel Patrick J. Callahan (collectively, the "State" or "Defendants") as Defendants.

Specifically, Plaintiffs challenged Executive Order ("EO") No. 107, issued by Governor Murphy on March 21, 2020. Governor Murphy's EO 107 was further clarified by Administrative Order ("AO") No. 2020-4, issued by Colonel Callahan on March 21, 2020, which Plaintiffs also challenge. These orders, issued and enacted at the very beginning of the COVID-19 pandemic, prohibited individuals from gathering indoors for religious worship with more than ten (10) people at a time, regardless of attempted social distancing or hygiene protocols by the individuals. Amended Complaint at ¶ 2. Plaintiffs allege that EO 107 "disparately and discriminatorily allows so-called "essential" commercial and other

secular entities” to hold gatherings consisting of more than ten people without limitations or scrutiny. *Id.* Importantly, EO 107 has not been in effect since June 9, 2020, when the Order was superseded in its entirety by EO 152, which relaxed gatherings limits and allowed for outdoor religious services in unlimited numbers. Motion to Dismiss at page 1, 4. Two weeks after filing the initial Complaint, Plaintiffs filed an Emergency Motion for Preliminary Injunction in this Court on June 17, 2020, seeking “preliminary and permanent injunctive relief to be able to safely assemble for religious worship in their God-given buildings.” Motion for Preliminary Injunction at page 2. Defendants Murphy, Grewal, and Callahan filed opposition on July 6, 2020, and the Court held oral arguments via Zoom on July 28, 2020. [Dkt. No. 24]. Following oral arguments, the Court issued an Order and Opinion on August 20, 2020, denying Plaintiffs’ Emergency Motion for Preliminary Injunction without prejudice. [Dkt. No. 31, 32]. In its ruling, the Court allowed Plaintiffs to “amend their complaint if so desired.” Opinion at page 3. One month after this Court issued its Order and Opinion, Plaintiffs filed an Amended Complaint on September 21, 2020. [Dkt. No. 33].

b. Amended Complaint and Motion for Reconsideration

Plaintiffs’ Amended Complaint added both defendants and claims to the litigation. In addition to the previously named Defendants Governor Murphy, Attorney General Grewal, and Colonel Callahan, Plaintiffs added Acting Camden County Prosecutor for Clementon Borough, Jill Mayer; Mayor of Clementon Borough, Thomas J. Weaver; Chief of Clementon Borough Police, Charles Grover; Mayor of Berlin Borough, Rick Miller; Chief of Berlin Borough Police, Millard Wilkson; Prosecutor for Berlin Borough, Richard A. De Michele; and Clementon Borough Prosecutor, Cheryl R. Hendler Cohen as

defendants. Plaintiffs further allege that Defendants' orders and actions violated their rights to equal protection under the United States Constitution and the New Jersey State Constitution, in addition to the alleged violations of free exercise, establishment of religion, right to assemble, and the New Jersey State Constitution as argued in the initial Complaint. Plaintiffs' Amended Complaint reiterates their claims against Defendants for both the initial enactment of the challenged Executive and Administrative Orders, as well as the enforcement and subsequent state prosecution of these orders by the collective Defendants against Plaintiffs Solid Rock and Bible Baptist churches and their respective pastors.

Approximately three months after filing their Amended Complaint, and nearly eight months after this Court denied Plaintiffs' Emergency Motion for Preliminary Injunction, Plaintiffs filed a Motion for Reconsideration on December 18, 2020. [Dkt. No. 50]. In this motion, Plaintiffs requested that the Court reconsider its denial of Plaintiffs' Emergency Motion and cited a change in controlling case law in support of their argument. Citing *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. _____, 2020 WL 6948354 (Nov. 25, 2020) and *Robinson v. Murphy*, 592 U.S. _____ (Dec. 15, 2020), Plaintiffs allege that these decisions from the Supreme Court of the United States dictate a ruling in their favor. Specifically, Plaintiffs allege that these cases illustrate instances where the Supreme Court granted injunctive relief to religious institutions against restrictive government orders dictating COVID-19 occupancy protocols. Following the filing of Defendants' Motions to Dismiss, Plaintiffs responded in opposition on February 2 and February 16, 2021. [Dkt. Nos. 61, 62, 67, 68]. Defendants filed a reply brief on February 23, 2021, and Plaintiffs filed a letter on April 14, 2021, advising this Court that the Supreme Court recently issued an opinion in *Tandon v. Newsom*, 593 U.S. _____ (2021). The Court requested supplemental

briefing from the parties addressing whether the *Tandon* decision affects the present case, if at all. Defendants argued in their supplemental briefing that the instant matter is unaffected by the *Tandon* decision, as the California case involved state emergency orders that were currently still in effect, as opposed to New Jersey EO 107 that was rescinded more than a year ago. [Dkt. No. 76]. Plaintiffs argue otherwise, claiming that *Tandon* not only mandates a strict scrutiny analysis of government restrictions involving religious matters by lower courts, but also alleging that the matter is not moot as New Jersey “has repeatedly, without warning, restricted or expanded limits on gatherings.” Supplemental Brief, ¶ 1.

c. Solid Rock

As discussed in this Court’s August 20, 2020, Opinion, Plaintiff Solid Rock Baptist Church of West Berlin (“Solid Rock”) has been operating since 1981 in Berlin, New Jersey, and its constituents gather regularly for in-person religious services. Amended Complaint at ¶¶ 56-60. The church sanctuary can seat up to 1,000 people, and the church is co-pastored by Plaintiff Charles Clark, Jr. and his son, Plaintiff Charles Clark, III. *Id.* ¶¶ 58, 59, 63. In the Amended Complaint, Plaintiffs trumpet the “ecclesiastical importance” of church attendance, and their belief that “physical assembly in one place on the Lord’s day, for mid-week services, revivals, and other special religious worship meetings is an essential part of their worship and that failure to assemble is a sin in violation of God’s commands as they interpret the Holy Bible.” *Id.* ¶¶ 60-61. Despite their strong belief in the necessity of in-person religious services, Solid Rock complied with Governor Murphy’s orders from March 23, 2020, until May 24, 2020, and did not hold any indoor worship services, instead offering livestreamed services online. *Id.* ¶ 64.

Pastor Clark notified Governor Murphy by letter on May 15, 2020, that Solid Rock intended to resume indoor worship services on May 24, 2020, and that his constituents “will be safe, sanitized, and use social distancing.” *Id.* ¶ 65-66. Pastor Clark also requested that the Governor declare churches to be “essential” businesses. *Id.* Three days later, on May 18, 2020, counsel for Solid Rock wrote to Governor Murphy’s office to express their constitutional concerns regarding the restrictions imposed by EO 107 and to inform the Governor that the church intended to resume indoor services on May 24, 2020. *Id.* ¶ 66. Though the Governor’s office did not respond to either letter, Plaintiffs allege that Camden County public safety officers unlawfully installed cameras outside the church on May 23, 2020. *Id.* ¶ 68.

Solid Rock held two religious worship services indoors with more than ten people in the sanctuary on Sunday, May 24, 2020. Amend. Compl. ¶ 67. Although the church normally accommodates up to 1,000 people, Plaintiffs permitted no more than 250 people in the sanctuary to comply with social distancing requirements. *Id.* Attendees had their temperature checked with touchless thermometers and those constituents with a temperature above 100.4° were not permitted to enter the church. *Id.* Reservations were required to attend the services, and individuals and their families sat at least 6-feet apart and wore masks. *Id.*

The very next day, on May 25, 2020, Lt. Michael Scheer of the Berlin Borough Police Department issued criminal complaints to both Pastor Clark, Jr. and Pastor Clark, III, charging them with “opening Solid Rock Church [sic.] on 5/24/20 @ 10 am [and 5:30pm] facilitating a gathering over 10 people in violation of EO 107. *Id.* ¶ 69.

Additionally, Plaintiffs allege that Defendant Jill S. Mayer, in her role as Acting Camden

County Prosecutor, instructed Defendants Miller, Wilkinson, and de Michelle not to entertain plea negotiations with Pastors Clark, Jr., and Clark III regarding the prosecution of said complaints in Clementon Municipal Court. *Id.* ¶ 71. These charges are still pending, and Solid Rock, Pastor Clark, Jr., and Pastor Clark, III contend that Governor Murphy’s Order prohibits “Solid Rock members to continue to assemble as commanded by the Lord in His Word, the *Holy Bible.*” *Id.* ¶ 72.

d. Bible Baptist

Since 1886, Plaintiff Bible Baptist has been in operation in Clementon, New Jersey, offering in-person religious services to its constituents on a regular basis multiple times per week. Amend. Compl. ¶¶ 38-39. Since 2014, the congregation is pastored by Plaintiff Andrew Reese and normally holds services for seventy (70) people at its weekly assemblies. ¶¶ 40, 44. Like fellow plaintiff Solid Rock, Bible Baptist strongly believes in the importance of in-person religious services, and their Amended Complaint states that “Christian fellowship is an essential part of their worship and that failure to assemble is a sin in violation of God’s commands as they interpret the *Holy Bible.*” *Id.* ¶ 41. Despite this belief, from March 23, 2020, until May 20, 2020, Bible Baptist offered livestreamed services online, instead of traditional indoor church services. *Id.* ¶ 45. On May 20, 2020, however, while EO No. 107 was still in effect, the church held its mid-week worship service in its building with more than ten people—all wearing masks—in the sanctuary. *Id.* ¶ 46. Following this service, Clementon Police Chief Charles Grover issued a criminal complaint to Pastor Reese, charging him with “opening Bible Baptist Church on May 20, 2020, and facilitating a gathering of more than 10 people on the premises of the Church in violation of Executive Order 107 in violation of APP. A:9-50.” *Id.* ¶ 48.

Plaintiffs allege that they fully sanitized the sanctuary before holding two religious worship services with more than 10 people in the sanctuary on Sunday, May 24, 2020. *Id.* ¶ 49. Parishioners sanitized the sanctuary between the services and all individuals in attendance, other than families, sat at least 6-feet apart and wore a mask. *Id.* It was at these services that, Plaintiffs allege, Clementon police officers arrived at the church prior to each of the two services. *Id.* ¶ 50. Though the police officers did not disrupt either service, Chief Grover once again swore out a criminal complaint charging Pastor Reese with violating EO No. 107. *Id.* As similarly alleged by Solid Rock, Bible Baptist claims that Defendant Meyer instructed other prosecutors and law enforcement officials not to entertain plea negotiations with Pastor Reese or Bible Baptist regarding the prosecution of said complaints in Clementon Municipal Court. *Id.* ¶ 51. Pastor Reese and Bible Baptist advise that they will continue “to assemble as commanded by the Lord,” and are concerned about the payment of fines and possible imprisonment regarding their continued state of worship. *Id.* ¶ 54.

II. Standard of Review

a. Motion for Reconsideration

In the District of New Jersey, Local Civil Rule 7.1(i) governs motions for reconsideration. *Bowers v. Nat'l. Collegiate Athletics Ass'n.*, 130 F.Supp.2d 610, 612 (D.N.J.2001). Local Rule 7.1(i) creates a procedure by which a court may reconsider its decision “upon a showing that dispositive factual matters or controlling decisions of law were overlooked by the court in reaching its prior decision.” *Agostino v. Quest Diagnostics Inc.*, Civ. No. 04–4362, 2010 WL 5392688 at *5 (D.N.J. Dec. 22, 2010) (citing *Bryan v. Shah*, 351 F.Supp.2d 295, 297 (D.N.J.2005); *Bowers*, 130 F.Supp.2d at 612). The “purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly

discovered evidence.” *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir.1985) (internal citation omitted). Reconsideration is to be granted only sparingly. *United States v. Jones*, 158 F.R.D. 309, 314 (D.N.J.1994). Such motions “may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.” *NL Indus., Inc. v. Commercial Union Ins. Co.*, 935 F.Supp. 513, 515–16 (D.N.J.1996) (internal citation omitted). Third Circuit jurisprudence dictates that a Rule 7.1(i) motion may be granted only if: (1) there has been an intervening change in the controlling law; (2) evidence not available when the Court issued the subject order has become available; or (3) it is necessary to correct a clear error of law or fact to prevent manifest injustice. *Max's Seafood Café v. Quinteros*, 176 F.3d 669, 677 (3d Cir.1999) (citing *North River Ins. Co. v. CIGNA Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir.1995)); *Agostino*, 2010 WL 5392688 at *5.

b. Mootness

A case traditionally becomes moot when a dispute no longer presents a live case or controversy, or the parties lack a cognizable interest in the outcome of the matter. *See County of Morris v. Nationalist Movement*, 273 F.3d 527, 533 (3d Cir. 2001); *Prysock v. U.S. Parole Comm’n*, No. 08-5116 (JBS), 2010 U.S. Dist. LEXIS 44286, at *6 (D.N.J. May 6, 2010). Important to note, a defendant’s voluntarily cessation of the alleged wrongful behavior “does not moot a case or controversy unless ‘subsequent events ma[ke] it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur’” *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 719 (2007) (quoting *Friends of Earth, Inc. v. Laidlaw Env’tl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000)). “[T]he central question of all mootness problems is whether changes in circumstances that

prevailed at the beginning of the litigation have forestalled any occasion for meaningful relief.” *Jersey Cent. Power & Light Co. v. N.J.*, 772 F.2d 35, 39 (3d Cir. 1985).

III. Discussion

a. Plaintiffs’ claims are moot

Plaintiff’s Amended Complaint argues that EO 107 and its enforcement prevents parishioners from attending constitutionally protected religious services and subjects Plaintiffs to ongoing penalties via the State’s prosecution. Additionally, Plaintiffs raise a claim of selective enforcement, alleging that EO 107 subjected Plaintiffs to “unequal treatment relative to similarly situated non-religious groups and individuals who also exercised First Amendment rights guaranteed under The United States Constitution.” Amend. Compl. ¶¶ 98-99. Plaintiffs claim that Defendants’ malfeasance is ongoing, and that their actions “have infringed upon and continue to infringe upon” Plaintiffs’ constitutional rights. *Id.*

Defendants argue, in their multiple motions to dismiss, that Plaintiffs claims are moot, as “EO 152 expressly superseded that rule [EO 107] in favor of more relaxed gatherings limits.” Motion at page 4. They also argue that EO 153, enacted on June 9, 2020, fully rescinded the general stay-at-home order issued by the State at the onset of the pandemic. *Id.* Defendants argue, as Plaintiffs’ claims are allegedly moot, that the Court should deny Plaintiffs’ Motion for Reconsideration, and dismiss the Amended Complaint. Furthermore, Defendants argue that the District Court should abstain from adjudicating Plaintiffs’ claims regarding pending state prosecutions for their alleged violations of EO 107, as “[t]he request to have this court interfere with those proceedings must be denied, because

black letter rules of abstention require the issues to be litigated in state court instead.” *Id.* at page 18.

In opposition, Plaintiffs propose that their claims should go forward and not be dismissed as moot, as Defendants have allegedly failed to show that the State’s purportedly wrongful action will not reoccur. [Dkt. No. 67 at page 7]. “Recent federal courts reviewing the fluid ebb and tide of COVID-19 executive orders across the nation have had no difficulty in deciding that, although the order may come and go, they may also come again,” Plaintiffs argue. *Id.* at page 9. Plaintiffs seek both declaratory and injunctive relief in their Amended Complaint, enjoining Defendants from enforcing the challenged Orders and declaring that the Orders are, on their face and as applied, unconstitutional. Amend. Compl. ¶ 103.

First, it is true that the contested EO 107 was rescinded by several of Governor Murphy’s additional orders. *See* Motion to Dismiss, page 5. “[S]ince June 9 [2020] the State has continually declined to impose any new gatherings cap on outdoor religious services—allowing them to proceed in unlimited numbers.” Thus, there can be no dispute that the alleged unlawful conduct—EO 107— has been terminated by Defendants. *See Behar v. Murphy*, No. 20-5206, 2020 WL 6375707 (D.N.J. Oct. 30, 2020), citing *Black United Fund of N.J., Inc. v. Kean*, 763 F.2d 156, 160 (3d Cir. 1985) (“[t]he raison d’etre for the injunction no longer exists.”)

Second, the Court is unconvinced by Plaintiffs’ argument that the State’s allegedly unlawful conduct could occur again. “This criterion has been interpreted to require more than speculation that a challenged activity will be resumed.” *Thompson v. United States Dep’t of Labor*, 813 F.2d 48, 51 (3d Cir. 1987) (citing *Preiser v. Newkirk*, 422 U.S. 395, 403 (1975)).

In response to the ongoing COVID-19 pandemic, Governor Murphy has issued numerous executive orders addressing occupancy limits and restrictions. While these orders certainly have changed over the course of the pandemic, they reflect the shifting nature of the coronavirus and its effect on society, as opposed to having been enacted in response to Plaintiffs' ongoing litigation. Plaintiffs present no evidence to suggest that the State will again enact measures restricting religious worship but worry about the possibility of the State's future response. Plaintiffs' concerns are worthy of consideration. As the Honorable Judge Kent A. Jordan recently noted in a similar case, "[t]he Plaintiffs insist that this case is not moot because the orders at issue are indeed capable of repetition yet evading review, but we have only their speculation that the same kind of heavily restrictive orders will be issued once more. Given the recent, wide-spread reporting that the Delta variant of the COVID-19 virus is causing increased concern among many public health authorities, the Plaintiffs' position ought not be rejected out of hand, and it has not been." *Butler County v. Governor of Pennsylvania*, No. 20-2936, at *1 (Jordan, J., concurring) (3rd Cir. August 11, 2021). This Court also appreciates Plaintiffs' position in the instant matter, but nevertheless finds that the harm Plaintiffs claim in not being able to serve their congregation has been ameliorated by the rescission of EO 107. Moreover, given the precedent set by recent Supreme Court decisions on pandemic-related restrictions, the "law no longer provides [the State] a mechanism" to "repeat the alleged harm." *Rendell v. Rumsfeld*, 484 F.3d 236, 242 (3d Cir. 2007). Thus, if the State enacts new restrictions in response to COVID-19 that Plaintiffs believe are violative of their rights, Plaintiffs are not without recourse. New claims could always be filed, and the Court will hear those claims, if appropriate, in due course.

Accordingly, the Court finds that Plaintiffs' claims are moot, and will therefore deny the Motion for Reconsideration and grant the Motions to Dismiss.

b. The Court will abstain under *Younger*

Plaintiffs also argue that this Court need not abstain from hearing this case under *Younger* as the matter falls within one of the permitted exceptions as developed by the Supreme Court. Described in *W.K. by W.K. v. N.J. Div. of Developmental Disabilities*, exceptions to *Younger* abstention apply in circumstances where : (1) the “state proceeding is motivated by a desire to harass or is conducted in bad faith,” *Huffman*, 420 U.S. at 611; (2) the “challenged provision is flagrantly and patently violative of express constitutional prohibitions,” *Moore v. Sims*, 442 U.S. 415, 423, 60 L.Ed. 2d 994, 99 S. Ct. 2371 (1979); or (3) there is “an extraordinarily pressing need for immediate equitable relief.” *Kugler v. Helfant*, 421 U.S. 117, 124-25, 44 L. Ed. 2d 15, 95 S. Ct. 1524 (1975). *W.K. by W.K.*, 974 F. Supp. 791, 796 (D.N.J. 1997). Any one of these exceptions, independently, are sufficient for a district court to evade abstention under *Younger*. See *Kugler v. Helfant*, 421 U.S. 117, 124, 95 S. Ct. 1524, 1530, 44 L. Ed. 2d 15 (1975) (explaining that the *Younger* Court ‘left room for federal equitable intervention’ when there is a showing of bad faith or harassment by state officials, when the state law is flagrantly violative of constitutional prohibitions, or where other ‘extraordinary circumstances’ exist and can be show.) Plaintiffs allege that the Governor’s contested Orders flagrantly violated their constitutional rights under the First and Fourteenth Amendments, and that the state prosecutor’s refusal to entertain plea negotiations constitutes bad faith. [Dkt. No. 67 at page 15]. Although Plaintiffs’ allegations are troubling—particularly that Plaintiffs, unlike others, were “targeted” by the setting up of cameras and the alleged prosecutor’s directive not to entertain any plea discussions typically

afforded to other defendants—the Court is nonetheless disinclined to involve itself in pending state court litigation. In this instance, it is clear that the ongoing state criminal prosecutions fall within the confines of *Younger* abstention and should be resolved in the jurisdiction in which they emanated—the state courts. The ongoing state proceedings (1) “are judicial in nature”; (2) “implicate important state interests”; and (3) “afford an adequate opportunity to raise federal claims.” *Schall v. Joyce*, 885 F.2d 101, 106 (3d Cir. 1989) (citing, e.g., *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 432 (1982)). Troubling as the alleged facts are, the Court finds that Plaintiffs are able to raise their claims of selective enforcement and bad faith as presented in the Amended Complaint in the state court proceeding. Moreover, in light of the recent Supreme Court rulings, Plaintiffs may raise the unconstitutionality of EO 107, the order they have already been charged with violating, in the state court proceeding as well. For these reasons, the Court will abstain under *Younger*.

IV. Conclusion

For the reasons set forth above, the Court finds that Plaintiffs’ claims are moot. Accordingly, Plaintiffs’ Motion for Reconsideration is DENIED and Defendants’ Motions to Dismiss are GRANTED. The Court will abstain from addressing Plaintiffs’ pending state court proceedings.

Date: 8/16/2021

/s/ Renée Marie Bumb
 HON. RENÉE MARIE BUMB
 UNITED STATES DISTRICT JUDGE

U.S. District Court
District of New Jersey [LIVE] (Camden)
CIVIL DOCKET FOR CASE #: 1:20-cv-06805-RMB-MJS

CLARK et al v. MURPHY et al
Assigned to: Judge Renee Marie Bumb
Referred to: Magistrate Judge Matthew J. Skahill
Case in other court: Third Circuit, 21-02732
Cause: 28:2201 Injunction

Date Filed: 06/03/2020
Date Terminated: 08/16/2021
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

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Date Filed	#	Docket Text
06/03/2020	1	COMPLAINT against PATRICK J. CALLAHAN, GURBIR S. GREWAL, PHILP D. MURPHY (Filing and Admin fee \$ 400 receipt number ANJDC-10896110) with JURY DEMAND, filed by CHARLES CLARK, III, SOLID ROCK BAPTIST CHURCH, BIBLE BAPTIST CHURCH OF CLEMENTON, CHARLES CLARK, JR., ANDREW REESE. (Attachments: # 1 Exhibit Exhibits 1-8)(TOME, BRIAN) (Entered: 06/03/2020)
06/03/2020	2	NOTICE of Appearance by WALTER STEPHEN ZIMOLONG on behalf of All Plaintiffs (ZIMOLONG, WALTER) (Entered: 06/03/2020)
06/03/2020		Judge Renee Marie Bumb and Magistrate Judge Joel Schneider added. (dd,) (Entered: 06/04/2020)
06/04/2020		Notice of Judicial Preferences. Click here for the Judge's Individual Procedure Requirements. (cry,) (Entered: 06/04/2020)
06/04/2020	3	SUMMONS ISSUED as to PATRICK J. CALLAHAN, GURBIR S. GREWAL, PHILP D. MURPHY. Attached is the official court Summons, please fill out Defendant and Plaintiffs attorney information and serve. (cry,) (Entered: 06/04/2020)
06/04/2020		CLERK'S QUALITY CONTROL MESSAGE - The case you electronically filed has been processed, however, the following deficiencies were found: Caption,Party Information , . The Clerk's Office has made the appropriate changes. Please refer to the Attorney Case Opening Guide for processing electronically filed cases. (cry,) (Entered: 06/04/2020)
06/04/2020	4	NOTICE of Appearance by DANIEL MICHAEL VANNELLA on behalf of PATRICK J. CALLAHAN, GURBIR S. GREWAL, PHILP D. MURPHY (VANNELLA, DANIEL) (Entered: 06/04/2020)
06/04/2020	5	Letter from Defendants re: Motion to Consolidate 1:20-cv-6805-RMB-JS into 2:20-cv-5420-CCC-ESK. (VANNELLA, DANIEL) (Entered: 06/04/2020)

06/08/2020	6	Summons Returned Unexecuted by CHARLES CLARK, JR., SOLID ROCK BAPTIST CHURCH, ANDREW REESE, BIBLE BAPTIST CHURCH OF CLEMENTON, CHARLES CLARK, III as to PHILP D. MURPHY., WAIVER OF SERVICE Returned Executed by CHARLES CLARK, JR., SOLID ROCK BAPTIST CHURCH, ANDREW REESE, BIBLE BAPTIST CHURCH OF CLEMENTON, CHARLES CLARK, III. (ZIMOLONG, WALTER) (Entered: 06/08/2020)
06/08/2020	7	WAIVER OF SERVICE Returned Executed by CHARLES CLARK, JR., SOLID ROCK BAPTIST CHURCH, BIBLE BAPTIST CHURCH OF CLEMENTON, ANDREW REESE, CHARLES CLARK, III. GURBIR S. GREWAL waiver sent on 6/5/2020, answer due 8/4/2020. (ZIMOLONG, WALTER) (Entered: 06/08/2020)
06/08/2020	8	WAIVER OF SERVICE Returned Executed by CHARLES CLARK, JR., SOLID ROCK BAPTIST CHURCH, BIBLE BAPTIST CHURCH OF CLEMENTON, ANDREW REESE, CHARLES CLARK, III. PATRICK J. CALLAHAN waiver sent on 6/5/2020, answer due 8/4/2020. (ZIMOLONG, WALTER) (Entered: 06/08/2020)
06/09/2020		CLERK'S QUALITY CONTROL MESSAGE - The Waiver of Service 6 filed by Walter Zimolong on 6/8/2020 was submitted incorrectly as a Summons Returned Unexecuted. PLEASE RESUBMIT using the correct event. This submission will remain on the docket unless otherwise ordered by the court. (dmr) (Entered: 06/09/2020)
06/10/2020	9	WAIVER OF SERVICE Returned Executed by CHARLES CLARK, JR., SOLID ROCK BAPTIST CHURCH, ANDREW REESE, CHARLES CLARK, III. PHILP D. MURPHY waiver sent on 6/5/2020, answer due 8/4/2020. (ZIMOLONG, WALTER) (Entered: 06/10/2020)
06/12/2020	10	Letter from Brian D. Tome, Esq.. (TOME, BRIAN) (Entered: 06/12/2020)
06/12/2020	11	Letter from Brian D. Tome, Esq.. (TOME, BRIAN) (Entered: 06/12/2020)
06/17/2020	12	MOTION for Order to Show Cause by All Plaintiffs. (Attachments: # 1 Brief, # 2 Exhibit 1, # 3 Affidavit, # 4 Affidavit, # 5 Affidavit, # 6 Text of Proposed Order)(ZIMOLONG, WALTER) (Entered: 06/17/2020)
06/18/2020		Set/Reset Deadlines as to 12 MOTION for Order to Show Cause . Motion set for 7/20/2020 before Judge Renee Marie Bumb. Unless otherwise directed by the Court, this motion will be decided on the papers and no appearances are required. Note that this is an automatically generated message from the Clerk's Office and does not supersede any previous or subsequent orders from the Court. (dmr) (Entered: 06/18/2020)
06/23/2020	13	TEXT ORDER This matter comes before the Court upon Plaintiffs' Motion for Preliminary Injunction, filed on June 17, 2020 [Dkt. No. 12]. The Parties are hereby ORDERED to confer regarding an expedited briefing schedule for this motion. The Parties shall advise the Court of the agreed upon expedited briefing schedule no later than Friday, June 26, 2020. So Ordered by Judge Renee Marie Bumb on 06/23/2020. (Costigan, Roberta) (Entered: 06/23/2020)
06/26/2020	14	Letter re 13 Order,. (VANNELLA, DANIEL) (Entered: 06/26/2020)
06/29/2020	15	TEXT ORDER This matter comes before the Court upon Defendants' letter [Dkt. No. 15], advising the Court that the parties do not intend to expedite briefing regarding Plaintiffs' Motion for a Preliminary Injunction. Given the emergent nature of Plaintiff's motion, this Court will hold a Zoom video conference with the parties to discuss this matter on Wednesday, July 1, 2020 at 11:00am. Counsel shall kindly contact Judge Bumb's Courtroom Deputy, Arthur Roney, at arthur_roney@njd.uscourts.gov, no later than 4:00pm on Tuesday, June 30, 2020, to provide an email address to which the Zoom invitation may

		be sent. So Ordered by Judge Renee Marie Bumb on 06/29/2020. (Costigan, Roberta) (Entered: 06/29/2020)
06/29/2020	16	Letter from Defendants re 15 Order,,. (VANNELLA, DANIEL) (Entered: 06/29/2020)
06/30/2020	17	MOTION for Leave to Appear Pro Hac Vice by All Plaintiffs. (Attachments: # 1 Text of Proposed Order, # 2 Affidavit of Brian D. Tome, # 3 Affidavit of David C. Gibbs, Jr., # 4 Affidavit of Jonathan D. Gibbs, # 5 Affidavit of Seth J. Kraus)(TOME, BRIAN) (Entered: 06/30/2020)
06/30/2020	18	Letter from Walter S. Zimolong. (ZIMOLONG, WALTER) (Entered: 06/30/2020)
07/01/2020		Set/Reset Deadlines as to 17 MOTION for Leave to Appear Pro Hac Vice . Motion set for 8/3/2020 before Magistrate Judge Joel Schneider. Unless otherwise directed by the Court, this motion will be decided on the papers and no appearances are required. Note that this is an automatically generated message from the Clerk`s Office and does not supersede any previous or subsequent orders from the Court. (dmr) (Entered: 07/01/2020)
07/01/2020	19	Minute Entry for proceedings held before Judge Renee Marie Bumb: Case Management Conference held via video on 7/1/2020. (Court Reporter Ted Formaroli) (ar1,) (Entered: 07/01/2020)
07/06/2020	20	BRIEF in Opposition filed by PATRICK J. CALLAHAN, GURBIR S. GREWAL, PHILP D. MURPHY re 12 MOTION for Order to Show Cause (Attachments: # 1 Declaration of Counsel, # 2 Exhibit A-I, # 3 Exhibit J-R, # 4 Exhibit S-Z, # 5 Exhibit AA-HH, # 6 Certificate of Service)(VANNELLA, DANIEL) (Entered: 07/06/2020)
07/06/2020	21	RESPONSE to Motion filed by PATRICK J. CALLAHAN, GURBIR S. GREWAL, PHILP D. MURPHY re 17 MOTION for Leave to Appear Pro Hac Vice (VANNELLA, DANIEL) (Entered: 07/06/2020)
07/06/2020	22	DECLARATION of Counsel re 20 Brief in Opposition to Motion, (<i>Amended</i>) by PATRICK J. CALLAHAN, GURBIR S. GREWAL, PHILP D. MURPHY. (Attachments: # 1 Exhibit AB)(VANNELLA, DANIEL) (Entered: 07/06/2020)
07/13/2020	23	REPLY BRIEF to Opposition to Motion filed by All Plaintiffs re 12 MOTION for Order to Show Cause <i>by All Plaintiffs</i> (TOME, BRIAN) (Entered: 07/13/2020)
07/17/2020	24	TEXT ORDER This matter comes before the Court upon Plaintiffs' Motion for a Preliminary Injunction [Dkt. No. 12], which seeks to enjoin Defendants from further enforcement of various restrictions on indoor gatherings for prayer and religious worship. The Court will hold Oral Argument to address Plaintiffs' Motion via Zoom video conference on Tuesday, July 28, 2020 at 2:30pm. The Zoom invitations will be sent to the attorney email addresses on file with the Clerks Office. If counsel wish to provide alternate email addresses, please promptly contact Judge Bumb's Courtroom Deputy, Arthur Roney, at Arthur_Roney@njd.uscourts.gov. So Ordered by Judge Renee Marie Bumb on 07/17/2020. (Costigan, Roberta) (Entered: 07/17/2020)
07/24/2020	25	ORDER Granting 17 Motion for Leave to Appear Pro Hac Vice as to Seth Kraus, David Gibbs, and Jonathan Gibbs, Esquire. Signed by Magistrate Judge Joel Schneider on 7/24/2020. (dmr) (Entered: 07/24/2020)
07/28/2020	26	Minute Entry for proceedings held before Judge Renee Marie Bumb: Motion Hearing held via video conference on 7/28/2020. Hearing on 12 MOTION for Order to Show Cause filed by ANDREW REESE, CHARLES CLARK, JR., SOLID ROCK BAPTIST CHURCH, CHARLES CLARK, III, BIBLE BAPTIST CHURCH OF CLEMENTON. Decision Reserved. (Court Reporter Ted Formaroli) (ar1,) (Entered: 07/29/2020)
07/30/2020	27	Notice of Request by Pro Hac Vice Jonathan D. Gibbs to receive Notices of Electronic

		Filings. (Pro Hac Vice fee \$ 150 receipt number BNJDC-11143343.) (TOME, BRIAN) (Entered: 07/30/2020)
07/31/2020		Pro Hac Vice counsel, JONATHAN D. GIBBS, has been added to receive Notices of Electronic Filing. Pursuant to L.Civ.R. 101.1, only local counsel are entitled to sign and file papers, enter appearances and receive payments on judgments, decrees or orders. (dmr) (Entered: 07/31/2020)
08/04/2020	28	Letter from Defendants requesting extension of time to answer, move, or otherwise respond re 1 Complaint,. (VANNELLA, DANIEL) (Entered: 08/04/2020)
08/04/2020	29	Letter from Defendants re: new Executive Order concerning indoor gatherings. (Attachments: # 1 Exhibit Executive Order 173)(VANNELLA, DANIEL) (Entered: 08/04/2020)
08/13/2020	30	Transcript of Proceedings held on 7/28/2020, before Judge RENEE MARIE BUMB. Court Reporter/Transcriber Ted Formaroli (609-575-3864). NOTICE REGARDING (1) REDACTION OF PERSONAL IDENTIFIERS IN TRANSCRIPTS AND (2) MOTION TO REDACT AND SEAL: The parties have seven (7) calendar days to file with the Court a Notice of Intent to Request Redaction of this Transcript to comply with Fed.R.Civ.P.5.2(a) (personal identifiers). Parties seeking to redact and seal this Transcript, or portions thereof, pursuant to L.Civ.R. 5.3(g) must e-file a Motion to Redact and Seal utilizing the event `Redact and Seal Transcript/Digital Recording`. Redaction Request to Court Reporter/Transcription Agency due, but not filed, by 9/3/2020. Redacted Transcript Deadline set for 9/14/2020. Release of Transcript Restriction set for 11/12/2020. (tf,) (Entered: 08/13/2020)
08/20/2020	31	OPINION. Signed by Judge Renee Marie Bumb on 8/20/2020. (dmr) (Entered: 08/20/2020)
08/20/2020	32	ORDER Denying without prejudice Plaintiffs' 12 Emergency Motion for a Preliminary Injunction; ORDERED that Plaintiffs are permitted leave to file an amended complaint, within 30 days, if they wish to pursue a claim for selective enforcement. Signed by Judge Renee Marie Bumb on 8/20/2020. (dmr) (Entered: 08/20/2020)
09/21/2020	33	AMENDED COMPLAINT against PATRICK J. CALLAHAN, GURBIR S. GREWAL, PHILP D. MURPHY, JILL S. MAYER, Thomas J. Weaver, CHARLES GROVER, RICK MILLER, MILLARD WILKINSON, Richard A. De Michele, Cheryl R. Hendler Cohen, filed by CHARLES CLARK, JR., SOLID ROCK BAPTIST CHURCH, BIBLE BAPTIST CHURCH OF CLEMENTON, ANDREW REESE, CHARLES CLARK, III. (Attachments: # 1 Exhibit Exhibits 1-8)(TOME, BRIAN) (Entered: 09/21/2020)
09/24/2020	34	Application and Proposed Order for Clerk's Order to extend time to answer as to Defendants Governor Murphy, Attorney General Grewal, and Superintendent Callahan. Attorney DANIEL MICHAEL VANNELLA for PATRICK J. CALLAHAN, DANIEL MICHAEL VANNELLA for GURBIR S. GREWAL, DANIEL MICHAEL VANNELLA for PHILP D. MURPHY added. (VANNELLA, DANIEL) (Entered: 09/24/2020)
09/25/2020		Clerk's Text Order - The document 34 Application for Clerk's Order to Ext Answer/Proposed Order, submitted by PATRICK J. CALLAHAN, GURBIR S. GREWAL, PHILP D. MURPHY has been GRANTED. The answer due date has been set for 10/19/2020. (dmr) (Entered: 09/25/2020)
10/13/2020	35	Letter from Defendants Murphy, Grewal, and Callahan requesting deadline for all defendants to respond re 33 Amended Complaint,. (VANNELLA, DANIEL) (Entered: 10/13/2020)
10/13/2020	36	TEXT ORDER This matter comes before the Court upon a letter filed by Defendants

		Murphy, Grewal, and Callahan [Dkt. No. 35], requesting, with no objection from Plaintiffs, that the deadline to answer, move, or otherwise respond to Plaintiffs' Amended Complaint [Dkt. No. 33], which was previously extended to October 19 [Dkt. No. 34] be extended further, namely until thirty (30) days after Plaintiffs file proof of service of Amended Complaint upon all newly-added Defendants. It is hereby ORDERED that the deadline for all Defendants to answer, move, or otherwise respond, be extended to thirty (30) days after Plaintiffs file on this docket proof of service for every named Defendant.. So Ordered by Judge Renee Marie Bumb on 10/13/2020. (Costigan, Roberta) (Entered: 10/13/2020)
10/15/2020	37	Request for Summons to be Issued by CHARLES CLARK, JR., SOLID ROCK BAPTIST CHURCH, BIBLE BAPTIST CHURCH OF CLEMENTON, ANDREW REESE, CHARLES CLARK, III as to Richard A. De Michele, CHARLES GROVER, Cheryl R. Hendler Cohen, JILL S. MAYER, RICK MILLER, MILLARD WILKINSON, Thomas J. Weaver. (TOME, BRIAN) (Entered: 10/15/2020)
10/16/2020	38	SUMMONS ON AMENDED COMPLAINT ISSUED as to Richard A. De Michele, CHARLES GROVER, Cheryl R. Hendler Cohen, JILL S. MAYER, RICK MILLER, MILLARD WILKINSON, Thomas J. Weaver. Attached is the official court Summons, please fill out Defendant and Plaintiffs attorney information and serve. (dmr) (Entered: 10/16/2020)
10/27/2020	39	ANSWER to Amended Complaint by JILL S. MAYER.(GOLDBERG, HOWARD) (Entered: 10/27/2020)
10/28/2020	40	Order Initial Conference set for 11/25/2020 at 9:30 AM in Teleconference before Magistrate Judge Joel Schneider. Signed by Magistrate Judge Joel Schneider on 10/28/2020. (dmr) (Entered: 10/28/2020)
11/05/2020	41	AFFIDAVIT of Service for Summons , <i>Answer Due 11/12/2020</i> served on Cheryl R. Hendler Cohen on 10/22/2020, filed by BIBLE BAPTIST CHURCH OF CLEMENTON, CHARLES CLARK, III, CHARLES CLARK, JR., ANDREW REESE, SOLID ROCK BAPTIST CHURCH. (Attachments: # 1 Affidavit Richard A. DeMichele served on 10/20/2020, answer due 11/10/2020, # 2 Affidavit Charles Grover served on 10/20/2020, answer due 11/10/2020, # 3 Affidavit Jill S. Mayer served on 10/20/2020, answer due 11/10/2020, # 4 Affidavit Rick Miller served on 10/20/2020, answer due 11/10/2020, # 5 Affidavit Thomas J. Weaver served on 10/20/2020, answer due 11/10/2020, # 6 Affidavit Millard Wilkinson served on 10/20/2020, answer due 11/10/2020)(TOME, BRIAN) (Entered: 11/05/2020)
11/08/2020	42	Letter from Defendants requesting adjournment of initial conference (with Plaintiffs' consent). (VANNELLA, DANIEL) (Entered: 11/08/2020)
11/09/2020	43	ORDER Denying 42 letter request to postpone the Initial Conference. Signed by Magistrate Judge Joel Schneider on 11/9/2020. (dmr) Modified on 11/9/2020 (dmr,). (Entered: 11/09/2020)
11/13/2020	44	TEXT ORDER: The dial-in information for the November 25, 2020 telephone conference scheduled for 9:30 a.m. is 1-888-684-8852, access code 3436790#. So Ordered by Magistrate Judge Joel Schneider on 11/13/20. (Shaw, A). (Entered: 11/13/2020)
11/25/2020	45	TEXT ORDER: The Court will hold a telephone status call on December 7, 2020 at 3:00 p.m. The call-in number for the call is 1-888-684-8852, access code 3436790#. So Ordered by Magistrate Judge Joel Schneider on 11/25/20. (Shaw, A). (Entered: 11/25/2020)
11/25/2020		Minute Entry for proceedings held before Magistrate Judge Joel Schneider: Initial Conference by phone held on 11/25/2020. (se,) Modified on 12/1/2020 (se). (Entered: 12/01/2020)

12/07/2020	46	ANSWER to Amended Complaint by Richard A. De Michele, RICK MILLER, MILLARD WILKINSON.(LONG, HOWARD) (Entered: 12/07/2020)
12/07/2020	47	TEXT ORDER. The Court having held a conference call with counsel on December 7, 2020, it is hereby ORDERED all motions to dismiss shall be filed by January 15, 2021. So Ordered by Magistrate Judge Joel Schneider on 12/7/20. (Schneider, Joel) (Entered: 12/07/2020)
12/07/2020		Minute Entry for proceedings held before Magistrate Judge Joel Schneider: Telephone Status Conference held on 12/7/2020. (se,) (Entered: 12/08/2020)
12/15/2020	48	Letter from Plaintiff's Counsel, Brian Tome. (TOME, BRIAN) (Entered: 12/15/2020)
12/16/2020	49	ORDER confirming deadline to file motions to dismiss by 1/15/2021. Signed by Magistrate Judge Joel Schneider on 12/16/2020. (dmr) (Entered: 12/16/2020)
12/18/2020	50	MOTION for Reconsideration re 32 Order on Motion for Order to Show Cause, 31 Opinion by All Plaintiffs. (Attachments: # 1 Brief, # 2 Text of Proposed Order) (ZIMOLONG, WALTER) (Entered: 12/18/2020)
12/21/2020		Set/Reset Deadlines as to 50 MOTION for Reconsideration re 32 Order on Motion for Order to Show Cause, 31 Opinion . Motion set for 1/19/2021 before Judge Renee Marie Bumb. Unless otherwise directed by the Court, this motion will be decided on the papers and no appearances are required. Note that this is an automatically generated message from the Clerk's Office and does not supersede any previous or subsequent orders from the Court. (dmr) (Entered: 12/21/2020)
12/27/2020	51	Letter from Defendants Murphy, Grewal and Callahan requesting Defendants' deadline for opposition to motion for reconsideration be reset to January 15, 2021 re 49 Order, 50 MOTION for Reconsideration re 32 Order on Motion for Order to Show Cause, 31 Opinion . (VANNELLA, DANIEL) (Entered: 12/27/2020)
12/30/2020	52	Letter from Brian D. Tome, Esq., Plaintiffs' Counsel, on behalf of Plaintiffs. (TOME, BRIAN) (Entered: 12/30/2020)
01/04/2021	53	NOTICE by BIBLE BAPTIST CHURCH OF CLEMENTON, CHARLES CLARK, JR., ANDREW REESE, SOLID ROCK BAPTIST CHURCH of <i>Supplemental Authority to Doc. 50, Motion for Reconsideration</i> (Attachments: # 1 Exhibit Supplemental Authority) (ZIMOLONG, WALTER) (Entered: 01/04/2021)
01/13/2021	54	ANSWER to Amended Complaint by CHARLES GROVER, Cheryl R. Hendler Cohen, Thomas J. Weaver.(BOTCHEOS, GEORGE) (Entered: 01/13/2021)
01/15/2021	55	MOTION to Dismiss <i>Amended Complaint</i> by PATRICK J. CALLAHAN, GURBIR S. GREWAL, PHILP D. MURPHY. (Attachments: # 1 Brief in Support of Defendants' Motion to Dismiss and in Opposition to Plaintiffs' Motion for Reconsideration, # 2 Text of Proposed Order, # 3 Certificate of Service)(VANNELLA, DANIEL) (Entered: 01/15/2021)
01/15/2021	56	BRIEF with corrected Point Headings (Dkt. 51-1) (VANNELLA, DANIEL) (Entered: 01/15/2021)
01/15/2021	57	MOTION to Dismiss <i>Amended Complaint</i> by JILL S. MAYER. Responses due by 2/2/2021 (Attachments: # 1 Brief, # 2 Certificate of Service, # 3 Text of Proposed Order) (GOLDBERG, HOWARD) (Entered: 01/15/2021)
01/19/2021		Set/Reset Deadlines as to 55 MOTION to Dismiss <i>Amended Complaint</i> , 57 MOTION to Dismiss <i>Amended Complaint</i> . Motion set for 2/16/2021 before Judge Renee Marie Bumb. Unless otherwise directed by the Court, this motion will be decided on the papers and no appearances are required. Note that this is an automatically generated message from the

		Clerk's Office and does not supersede any previous or subsequent orders from the Court. (dmr) (Entered: 01/19/2021)
01/25/2021	58	MOTION to Dismiss <i>Complaint</i> by CHARLES GROVER, Cheryl R. Hendler Cohen. Responses due by 2/1/2021 (Attachments: # 1 Brief, # 2 Certification, # 3 Text of Proposed Order)(BOTCHEOS, GEORGE) (Entered: 01/25/2021)
01/26/2021		Set/Reset Deadlines as to 58 MOTION to Dismiss <i>Complaint</i> . Motion set for 3/1/2021 before Judge Renee Marie Bumb. Unless otherwise directed by the Court, this motion will be decided on the papers and no appearances are required. Note that this is an automatically generated message from the Clerk's Office and does not supersede any previous or subsequent orders from the Court. (dmr) (Entered: 01/26/2021)
02/01/2021	59	MOTION to Dismiss <i>Amended Complaint</i> by Richard A. De Michele, RICK MILLER, MILLARD WILKINSON. Responses due by 2/1/2021 (Attachments: # 1 Text of Proposed Order)(LONG, HOWARD) (Entered: 02/01/2021)
02/02/2021		Set/Reset Deadlines as to 59 MOTION to Dismiss <i>Amended Complaint</i> . Motion set for 3/1/2021 before Judge Renee Marie Bumb. Unless otherwise directed by the Court, this motion will be decided on the papers and no appearances are required. Note that this is an automatically generated message from the Clerk's Office and does not supersede any previous or subsequent orders from the Court. (dmr) (Entered: 02/02/2021)
02/02/2021	60	Letter from Plaintiff's Counsel, Brian Tome, Requesting Extension to File Opposition to Document 56 re 56 Brief. (TOME, BRIAN) (Entered: 02/02/2021)
02/02/2021	61	BRIEF in Opposition filed by All Plaintiffs re 57 MOTION to Dismiss <i>Amended Complaint</i> (Attachments: # 1 Certificate of Service)(TOME, BRIAN) (Entered: 02/02/2021)
02/02/2021	62	BRIEF in Opposition filed by All Plaintiffs re 58 MOTION to Dismiss <i>Complaint</i> (Attachments: # 1 Certificate of Service)(TOME, BRIAN) (Entered: 02/02/2021)
02/03/2021	63	Rule 7.1(d)(5) Letter for an automatic extension of the return date of a dispositive motion re 59 MOTION to Dismiss <i>Amended Complaint</i> , 55 MOTION to Dismiss <i>Amended Complaint</i> . (TOME, BRIAN) (Entered: 02/03/2021)
02/04/2021		Set/Reset Deadlines as to 59 MOTION to Dismiss <i>Amended Complaint</i> . Motion set for 3/15/2021 before Judge Renee Marie Bumb. Unless otherwise directed by the Court, this motion will be decided on the papers and no appearances are required. Note that this is an automatically generated message from the Clerk's Office and does not supersede any previous or subsequent orders from the Court. (dmr) (Entered: 02/04/2021)
02/04/2021		CLERK'S QUALITY CONTROL MESSAGE - The Rule 7.1 Letter 63 filed by Brian D. Tome on 2/3/2021 cannot be granted automatically for Motion to Dismiss 55 due to the expiration of time to submit a Rule 7.1 Letter for Motions with that return date. PLEASE SUBMIT a letter request address to the Judge using the "Letter" event found under Other Documents. This submission will remain on the docket unless otherwise ordered by the court. (dmr) (Entered: 02/04/2021)
02/04/2021	64	Letter from Plaintiff's Counsel, Brian Tome, Requesting Extension to File Opposition to D.I. 55 and 59 re 59 MOTION to Dismiss <i>Amended Complaint</i> , 55 MOTION to Dismiss <i>Amended Complaint</i> . (TOME, BRIAN) (Entered: 02/04/2021)
02/04/2021	65	Letter from Defendants re 64 Letter. (VANNELLA, DANIEL) (Entered: 02/04/2021)
02/08/2021	66	ORDER granting letter request to extend the return date of Motions 55 and 59 until 3/1/2021. Signed by Judge Renee Marie Bumb on 2/5/2021. (dmr) (Entered: 02/08/2021)

02/08/2021		Set/Reset Deadlines as to 55 MOTION to Dismiss <i>Amended Complaint</i> . Motion set for 3/1/2021 before Judge Renee Marie Bumb. Unless otherwise directed by the Court, this motion will be decided on the papers and no appearances are required. Note that this is an automatically generated message from the Clerk's Office and does not supersede any previous or subsequent orders from the Court. (dmr) (Entered: 02/08/2021)
02/16/2021	67	BRIEF in Opposition filed by All Plaintiffs re 55 MOTION to Dismiss <i>Amended Complaint by Defendants Murphy, Grewal, and Callahan</i> (Attachments: # 1 Certificate of Service)(TOME, BRIAN) (Entered: 02/16/2021)
02/16/2021	68	BRIEF in Opposition filed by All Plaintiffs re 59 MOTION to Dismiss <i>Amended Complaint by Defendants Miller, Wilkinson, and DeMichele</i> (Attachments: # 1 Certificate of Service)(TOME, BRIAN) (Entered: 02/16/2021)
02/16/2021	69	NOTICE of Appearance by ROBERT J. MCGUIRE on behalf of PATRICK J. CALLAHAN, GURBIR S. GREWAL, PHILP D. MURPHY (MCGUIRE, ROBERT) (Entered: 02/16/2021)
02/18/2021	70	Letter from Defendants Murphy, Grewal, and Callahan requesting 1-day extension of deadline to file reply re 66 Order, 67 Brief in Opposition to Motion, 55 MOTION to Dismiss <i>Amended Complaint</i> , 56 Brief. (VANNELLA, DANIEL) (Entered: 02/18/2021)
02/23/2021	71	REPLY BRIEF to Opposition to Motion filed by PATRICK J. CALLAHAN, GURBIR S. GREWAL, PHILP D. MURPHY re 55 MOTION to Dismiss <i>Amended Complaint</i> (Attachments: # 1 Certificate of Service)(VANNELLA, DANIEL) (Entered: 02/23/2021)
03/01/2021	72	Letter from Plaintiffs' Counsel, Brian Tome, Regarding Supreme Court Decision in Gateway City Church, et al, v. Newsom. (TOME, BRIAN) (Entered: 03/01/2021)
03/03/2021	73	RESPONSE re 72 Letter. (VANNELLA, DANIEL) (Entered: 03/03/2021)
03/15/2021		Magistrate Judge Matthew J. Skahill added. Magistrate Judge Joel Schneider no longer assigned to case. (mb,) (Entered: 03/15/2021)
04/14/2021	74	Letter from Plaintiff's Counsel, Brian Tome. (TOME, BRIAN) (Entered: 04/14/2021)
04/15/2021	75	TEXT ORDER The Court is in receipt of Plaintiffs' April 14, 2021, letter. [Docket No. 74.] The Court hereby requests the parties to file supplemental briefs that explain how the Supreme Court of the United States' decision in Tandon v. Newsom affects this case, if at all. The Supreme Court's decision can be found at https://www.supremecourt.gov/opinions/20pdf/20a151_4g15.pdf . The parties shall file their supplemental briefs by no later than Monday, May 3, 2021. So Ordered by Judge Renee Marie Bumb on 04/15/2021. (Costigan, Roberta) (Entered: 04/15/2021)
05/03/2021	76	RESPONSE re 75 Order,, (VANNELLA, DANIEL) (Entered: 05/03/2021)
05/03/2021	77	BRIEF in Support filed by All Plaintiffs re 50 MOTION for Reconsideration re 32 Order on Motion for Order to Show Cause, 31 Opinion (TOME, BRIAN) (Entered: 05/03/2021)
06/28/2021	78	TEXT ORDER: Pursuant to L. CIV. R. 7.1.1 (eff. June 21, 2021), the parties, including intervening parties, are required to file a statement (separate from any pleading) containing specific information regarding third-party litigation funding. See L. Civ. R. 7.1.1(a)(1-3). This statement shall be filed within 45 days of the effective date of this Rule, or no later than August 5, 2021. So Ordered by Magistrate Judge Matthew J. Skahill on 6/28/2021. (se,) (Entered: 06/28/2021)
08/16/2021	79	OPINION. Signed by Judge Renee Marie Bumb on 8/16/2021. (dmr) (Entered: 08/17/2021)
08/16/2021	80	ORDER denying Plaintiffs' 50 Motion for Reconsideration; granting Defendants' 55 , 57

		58 , and 59 Motions to Dismiss. ***CIVIL CASE TERMINATED. Signed by Judge Renee Marie Bumb on 8/16/2021. (dmr) (Entered: 08/17/2021)
09/15/2021	81	NOTICE OF APPEAL by BIBLE BAPTIST CHURCH OF CLEMENTON, CHARLES CLARK, III, CHARLES CLARK, JR., ANDREW REESE, SOLID ROCK BAPTIST CHURCH. Filing fee \$ 505, receipt number ANJDC-12804490. The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. Appeal Record due by 9/16/2021. (Attachments: # 1 Certificate of Service)(TOME, BRIAN) (Entered: 09/15/2021)
09/20/2021	82	USCA Case Number 21-2732 for 81 Notice of Appeal (USCA), filed by ANDREW REESE, CHARLES CLARK, JR., SOLID ROCK BAPTIST CHURCH, CHARLES CLARK, III, BIBLE BAPTIST CHURCH OF CLEMENTON. USCA Case Manager Desiree (Document Restricted - Court Only) (ca3dwb,) (Entered: 09/20/2021)

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No. 21-2732

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

SOLID ROCK BAPTIST CHURCH, INC., ET AL.,
Plaintiffs-Appellants,

v.

GOVERNOR PHILIP D. MURPHY, ET AL.,
Defendants-Appellees.

On Appeal from the U.S. District Court for the
District of New Jersey,
Civ. No. 1:20-cv-6805-RMB (Hon. Renée Marie Bumb, U.S.D.J.)

**Appendix to Brief of Appellants Solid Rock Baptist Church; Bible
Baptist Church of Clementon; Andrew Reese; Charles Clark, Jr., and
Charles Clark III**

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* *Pro Hac Vice Motion
Forthcoming*

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

SOLID ROCK BAPTIST CHURCH, a New Jersey not-for-profit corporation; **BIBLE BAPTIST CHURCH OF CLEMENTON**, a New Jersey not-for-profit corporation; **ANDREW REESE; CHARLES CLARK, JR.;** and **CHARLES CLARK III,**

Plaintiffs,

v.

PHILIP D. MURPHY, Governor of the State of New Jersey, in his official capacity; **GURBIR S. GREWAL**, Attorney General of the State of New Jersey, in his official capacity; and **PATRICK J. CALLAHAN**, Superintendent of State Police and State

Civil No. _____

**VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

Director of Emergency Management, in his
official capacities,

Defendants.

Plaintiffs Solid Rock Baptist Church and Charles Clark, Jr., and Charles Clark III, Co-Pastors of Solid Rock Baptist Church; Bible Baptist Church, a New Jersey nonprofit corporation, and Andrew Reese, Pastor of Bible Baptist Church; for their Complaint for Declaratory and Injunctive Relief against Defendant Philip D. Murphy in his official capacity as New Jersey Governor; Gurbir S. Grewal in his official capacity as Attorney General of the State of New Jersey; and Colonel Patrick J. Callahan in his official capacity as New Jersey State Director of Emergency Management and Superintendent of State Police allege as follows:

INTRODUCTION

1. Plaintiffs bring this suit to challenge Executive Order No. 107 issued by New Jersey Governor Philip Murphy on March 21, 2020, as further clarified by Administrative Order No. 2020-4 issued by Defendant Patrick Callahan on March 21, 2020. The Executive Order’s virtual ban of religious assembly is unconstitutional on-its-face and as applied because it is not narrowly tailored and does not permit less restrictive means to achieve the government’s interest without burdening Plaintiffs’ rights protected by the U.S. Constitution.

2. The challenged EO 107 and AO 2020-4 prohibit Plaintiffs from gathering indoors for religious worship with more than ten (10) people, regardless of whether the Church Plaintiffs meet or exceed the social distancing and protective hygiene guidelines

pursuant. Meanwhile, EO 107 disparately and discriminatorily allows so-called “essential” commercial and other secular entities (e.g., liquor stores, licensed medical marijuana retailers, transportation carriers, grocery stores, hotels, professional offices, commercial retail stores that supply essential sectors) to accommodate gatherings of more than 10 people without scrutiny or numerical limits. *Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly*, 309 F.3d 144, 165 (3d Cir. 2002)(“the Free Exercise Clause's mandate of neutrality toward religion prohibits government from “deciding that secular motivations are more important than religious motivations.”)

3. Governor Murphy’s Executive Orders, as clarified by Defendant Callahan’s Administrative Order, has been interpreted, applied, and enforced by Defendants Attorney General Grewal and Colonel Callahan such that local police officers have visited the churches, installed cameras on church property for surveillance purposes, investigated the parking lot of one church, filed Complaints against the 3 pastors for allowing religious gatherings that exceed the 10-people limit, even though the gathered individuals were separated by six feet and wore masks unless hindered from doing so for health reasons, while occupying the sanctuary, meeting or exceeding the social distancing and personal hygiene recommendations for “Essential Services” still permitted to gather.

4. The Defendants’ Orders are not neutral laws of general applicability because they target constitutionally protected activity, significantly burden the Plaintiffs’ right to the freedom of religion and assembly, establish an orthodox form of religious exercise approved by the State of New Jersey, all the while providing broad exemptions for many secular activities that are not constitutionally protected,

all without due process of law. *Tenafly*, 309 F.3d at 165 (“if the law is not neutral (*i.e.*, if it discriminates against religiously motivated conduct) or is not generally applicable (*i.e.*, if it proscribes particular conduct only or primarily when religiously motivated), strict scrutiny applies and the burden on religious conduct violates the Free Exercise Clause unless it is narrowly tailored to advance a compelling government interest.”)

JURISDICTION AND VENUE

5. This civil rights action raises federal questions under the United States Constitution, specifically the First and Fourteenth Amendments, and is brought pursuant to 42 U.S.C. § 1983.

6. The Court has jurisdiction over Plaintiffs’ Federal Claim under U.S. Const., Art. III, Sec 2, and under 28 U.S.C. §§ 1331 and 1343.

7. The Court has supplemental jurisdiction over Plaintiffs’ state law claim under 28 U.S.C. § 1367.

8. This Court has authority to grant the requested declaratory relief under 28 U.S.C. §§ 2201 and 2202, and the requested injunctive relief pursuant to Rule 65 and the Federal Rules of Civil Procedure.

9. This Court is authorized to grant reasonable costs, including reasonable attorneys’ fees and under 42 U.S.C. § 1988 and G.L. c. 12, § 11I.

10. Venue is proper in this judicial District pursuant to 28 U.S.C. § 1391(b) because Defendants reside in this District, perform their official duties in this District, and

a substantial part of the events or omissions giving rise to the claims occurred in this District.

PARTIES

11. Plaintiff Bible Baptist Church of Clementon (“Bible Baptist”) is a non-profit church organized exclusively for religious purposes within the meaning of § 501(c)(3) of the Internal Revenue Code, incorporated as a nonprofit corporation under the Laws of the State of New Jersey in 1976 and located in the City of Clementon, County of Camden, New Jersey. Hereinafter, every reference to Bible Baptist includes its members.

12. Plaintiff Andrew Reese serves as Pastor of Bible Baptist in Clementon, New Jersey, and has received multiple citations for holding religious worship services indoors with more than 10 people in violation of Defendant Gov. Murphy’s executive orders at issue herein.

13. Plaintiff Solid Rock Baptist Church of West Berlin (“Solid Rock”) is a non-profit church organized exclusively for religious purposes within the meaning of § 501(c)(3) of the Internal Revenue Code, the corporation formed in 1983, and located in the City of Berlin, County of Camden, New Jersey. Hereinafter, every reference to Solid Rock includes its members.

14. Plaintiff Charles Clark, Jr., serves as Co-Pastor of Solid Rock in Berlin, New Jersey, and has received multiple citations for holding religious worship services indoors with more than 10 people in violation of Defendant Gov. Murphy’s executive orders at issue herein.

15. Plaintiff Charles Clark III serves as Co-Pastor of Solid Rock in Berlin, New Jersey, and has received multiple citations for holding religious worship services indoors with more than 10 people in violation of Defendant Gov. Murphy’s executive orders at issue herein.

DEFENDANTS

16. Defendant Philip D. Murphy, in his official capacity as Governor of the State of New Jersey (“Governor Murphy”), is responsible for enacting and enforcing the COVID-19 Executive Orders at issue in this litigation and is sued in his official capacity only.

17. Defendant Gurbir S. Grewal, in his official capacity as Attorney General for the State of New Jersey, is the chief law enforcement officer of the State of New Jersey, exercising, delegating, and supervising all the powers and duties of the New Jersey Department of Law and Public safety, including the enforcement of N.J.S.A. App. A:9-49 and 50, which impose criminal penalties for violation of the Executive Orders and under which all Pastor Plaintiffs have been charged.

18. Defendant Patrick J. Callahan, in his official capacity as the Superintendent of the New Jersey Division of State Police as well as the State Director of Emergency Management, is responsible for carrying out the enforcement of N.J.S.A. App. A:9-49, which imposes criminal penalties for violations of the Governor’s Executive Orders, and for implementing the Governor’s Executive Orders.

19. Each Defendant has acted under color of state law with respect to all acts or omissions complained of herein.

STATEMENT OF FACTS

The Governor's Executive Orders

20. On March 9, 2020, Defendant Governor Murphy issued Executive Order No. 103 (“EO 103), declaring a State of Emergency and a Public Health Emergency pursuant to N.J.S.A. 26:13-1 *et seq.*, N.J.S.A. App. A:9-33 *et seq.*, N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 based upon the public health emergency posed by the COVID-19 pandemic the world is currently undergoing. *See* EO 103, attached as **Exhibit 1**. The Governor’s State of Emergency proclamation is still in effect.

21. In EO 103 Governor Murphy also authorized and empowered the State Director of Emergency Management, Colonel Patrick Callahan, who is the Superintendent of the State Police, in conjunction with the Commission of DOH, to “take any such emergency measures as the State Director may determine necessary” to protect New Jersey citizens from possible COVID-19 exposure.

22. On March 16, Defendant Gov. Murphy issued Executive Order 104 (“EO 104”) prohibiting gatherings of more than 50 people, excluding “normal operations at airports, bus and train stations, medical facilities, office environments, factories, assemblages for the purpose of industrial or manufacturing work, construction sites, mass transit, or the purchase of groceries or consumer goods.” EO 104 authorized the imposition of criminal penalties of fines up to \$1,000 and imprisonment for up to six months for violation of its terms. *See* EO 104 attached as **Exhibit 2**.

23. On March 21, 2020, Gov. Murphy issued Executive Order No. 107 (“EO 107”) prohibiting all “[g]atherings of individuals, such as parties, celebrations, or other

of more than 10 people, even if those gathering indoors practice the recommended social distancing and protective hygiene protocols. *See* EO 148 attached as **Exhibit 6**.

28. The Governor’s prohibition against Plaintiffs gathering for religious worship with more than 10 people continues to be in effect.

29. On May 22, 2020, President Donald J. Trump announced that new Centers for Disease Control guidance will classify houses of worship as “essential,” and called on governors to allow them to open “right now.”

Bible Baptist Church

30. Plaintiff Bible Baptist Church has been operating in Clementon since 1886 and officially incorporated as a New Jersey nonprofit corporation in 1976.

31. Multiple times almost every week since that date, for 134 years, Bible Baptist has assembled its members and attendees to engage in religious worship as a church in Clementon.

32. Bible Baptist has been pastored by Plaintiff Andrew Reese since 2014.

33. The Church and its members and congregants, including Pastor Reese, who together make up the Church, believe that a physical assembly in one place on the Lord’s day, for mid-week services, revivals, other special religious worship meetings, and for Christian fellowship is an essential part of their worship and that failure to assemble is a sin in violation of God’s commands as they interpret the *Holy Bible* in such verses as Hebrews 10:25, Romans 10:17, Acts 2:42, I Corinthians 12:25-26, Luke 14:23 and Ephesians 5:25-26.

34. Church attendance is of such ecclesiastical importance to Bible Baptist that under the church's bylaws, the failure of a member to attend at least one regular worship service in six months subjects that member's membership to automatic termination.

35. The Church has terminated the membership of several individuals for nonattendance since Pastor Reese has been pastor.

36. The Church is a small congregation, normally having 70 people at its weekly worship assembly.

37. From March 23, 2020, until May 20, 2020, Bible Baptist operated in compliance with EO 107 by not having indoor worship services, instead livestreaming Pastor Reese's sermons, being assured that the limitations on Bible Baptist's right to assemble in compliance with its faith would be temporary.

38. Then, on May 20, 2020, Bible Baptist held its mid-week worship service in its building with more than 10 people in the sanctuary. Every individual attending, other than families, sat at least 6 feet apart and wore a mask.

39. On Tuesday, May 19, 2020, church members spent most of the day cleaning and sanitizing the church sanctuary in preparation for the mid-week worship service.

40. On May 21, 2020, Chief Charles Grover, Clementon Police Department swore out Complaint # 0410-SC-006154, charging Pastor Reese with violation of APP. A:9-50 for "opening Bible Baptist Church on May 20, 2020 and facilitating a gathering of more than 10 people on the premises of the Church in violation of Executive Order 107 in violation of APP. A:9-50" and summoning him to appear before the Clementon Borough Municipal Court on June 16, 2020.

41. On Sunday, May 24, 2020, Bible Baptist held two Sunday religious worship service indoors with more than 10 people in the sanctuary. The sanctuary was sanitized before each worship service. Every individual attending, other than families, sat at least 6 feet apart and wore a mask.

42. Clementon police officers showed up for less than half an hour for both services and then, on May 24, 2020, Chief Charles Grover of Clementon Police Department swore out Complaint # 0410-SC-00006150 charging Pastor Reese with violating APP. A:9-50 for “opening Bible Baptist Church on May 20, 2020 and facilitating a gathering of more than 10 people on the premises of the Church in violation of Executive Order 107 in violation of APP. A:9-50” and summoning him to appear before the Clementon Borough Municipal Court.

43. Bible Baptist’s sanctuary has a seating capacity of 75, and for the gatherings already held during the pandemic, at no time was the sanctuary filled to capacity, but instead, the church only allowed a maximum of 38 people in the sanctuary so as to comply with social distancing requirements.

44. Despite the threat of criminal prosecution, his faith compels Pastor Reese and Bible Baptist members to continue to assemble as commanded by the Lord in His Word, the *Holy Bible*.

45. Pastor Reese and Bible Baptist congregants are concerned that Pastor Reese and the congregants will be charged and sentenced to the payment of fines and to imprisonment when they continue to gather for religious worship indoors with more than 10 people.

46. Pastor Reese and Bible Baptist have been complying and are willing to continue to comply with Center for Disease Control social distancing and protective hygiene requirements for the protection of the gathering participants and to stop the spread of COVID-19.

Solid Rock Baptist Church

47. Plaintiff Solid Rock Baptist Church of West Berlin has been operating in West Berlin, New Jersey since 1981 and officially incorporated as a New Jersey nonprofit corporation in 1983.

48. Multiple times almost every week since that date, for 39 years, Solid Rock has gathered its members and attendees to engage in religious worship as a church in Berlin, New Jersey.

49. Solid Rock has been pastored by Plaintiff Charles Clark, Jr., since 1981.

50. Solid Rock is co-pastored by Plaintiff Charles Clark III.

51. Solid Rock and its members and congregants, including Pastor Clark, Jr., and Pastor Clark III, who together make up the Church, believe that a physical assembly in one place on the Lord's day, for mid-week services, revivals, and other special religious worship meetings is an essential part of their worship and that failure to assemble is a sin in violation of God's commands as they interpret the *Holy Bible* in such verses as Hebrews 10:25, Romans 10:17, Acts 2:42, I Corinthians 12:25-26, Luke 14:23 and Ephesians 5:25-26.

52. Church attendance is of such ecclesiastical importance that under the church's bylaws, the failure of a member to attend at least one regular worship service in four months subjects that member's membership to automatic termination.

53. Solid Rock has terminated the membership of several individuals for nonattendance since Pastor Clark has been pastor.

54. Solid Rock is a large congregation, with its sanctuary able to seat up to 1000 people.

55. From March 23, 2020, until May 24, 2020, Solid Rock operated in compliance with EO 107 by not having indoor worship services, instead livestreaming Pastor Clark's sermons, being assured that the limitations on Solid Rock's right to assemble in compliance with its faith would be temporary.

56. By a letter to Governor Murphy dated May 15, 2020, Pastor Clark gave notice to Defendant Murphy that "We will be safe, sanitized, and using social distancing. Solid Rock will begin having services in our building on May 24, 2020," and asking that the Governor declare churches to be "essential" with the attendant freedoms allowed those secular businesses, services, and workers. (Attached as **Exhibit 7**).

57. By letter to Governor Murphy dated May 18, 2020, counsel for Solid Rock explained their constitutional concerns with his executive orders prohibiting churches from gathering with more than 10 people indoors, gave the Governor notice that Solid Rock would be opening for services May 24, 2020, and asked that his office confirm in writing that churches in New Jersey could begin meeting again. (Attached as **Exhibit 8**).

58. After no response to either letter from Defendant Murphy, on Sunday, May 24, 2020, Solid Rock held two religious worship services indoors with more than 10 people in the sanctuary. Solid Rock permitted no more than 250 people in the sanctuary so as to comply with social distancing requirements. Every person had his temperature checked with a touchless thermometer before he could enter and those with a temperature of 100.4° and above were not permitted to attend. Every individual attending, other than families, sat at least 6-feet apart and wore a mask. In preparation for the Sunday gatherings, church members spent much of the day before sanitizing the sanctuary. Members were required to make reservations to attend the Sunday services so as to enable the church to enforce its social distancing protocols.

59. The day before the services, Camden County public safety officers installed cameras at Solid Rock in order to surveille supporters and protesters that gathered outside the church during the worship services.

60. Berlin police officers did not disrupt the services, but on May 25, 2020, Lt. Michael Scheer of the Berlin Borough Police Department swore out 2 Complaints charging Pastor Clark, Jr., with “opening Solid Rock Church [*sic.*] on 5/24/20 @ 10 am [and 5:30 pm] facilitating a gathering over 10 people in violation of EO 107. In violation of APP. A:9-50” and summoning him to appear before the Berlin Borough Municipal Court on July 6, 2020.

61. Berlin police officers did not disrupt the services, but on May 25, 2020, Lt. Michael Scheer of the Berlin Borough Police Department swore out a Complaint charging Pastor Clark III with “opening Solid Rock Church [*sic.*] on 5/24/20 @ 10 am [and 5:30

pm] facilitating a gathering over 10 people in violation of EO 107. In violation of APP. A:9-50.” and summoning him to appear before the Berlin Borough Municipal Court on July 6, 2020.

62. Despite the threat of criminal prosecution, his and their faith compel(s) Co-Pastors Clark, Jr., and Clark III, and Solid Rock members to continue to assemble as commanded by the Lord in His Word, the *Holy Bible*.

63. Pastors Clark, Jr., and Clark III, and Solid Rock congregants are concerned that Pastors Clark, Jr., and Clark III, and congregants will be charged and sentenced to the payment of fines and to imprisonment when they continue to gather for religious worship indoors with more than 10 people.

64. Co-Pastors Clark, Jr., and Clark III, and Solid Rock have been complying and are willing to continue to comply with Center for Disease Control social distancing and protective hygiene requirements for the protection of the gathering participants and to stop the spread of COVID-19.

COUNT 1
(U.S. Const., First and Fourteenth Amendment – Free Exercise)

65. Plaintiffs hereby allege and incorporate by reference each and every allegation contained in paragraph 1 through 64 of this Verified Complaint as though fully set forth herein.

66. The First Amendment of the United States Constitution provides that “Congress shall make no law... prohibiting the free exercise [of religion].” Under the

Fourteenth Amendment, this prohibits every level of state and local government from making a law prohibiting the free exercise of religion.

67. On their face or as applied, the Orders violate the First Amendment because they:

- a. constitute an overbroad restriction on the Plaintiffs' rights to assemble to exercise their religious belief that they must worship together as a religious body as commanded by Scripture;
- b. place more stringent restrictions on the Church than are placed on secular businesses such as liquor stores, home improvement stores, and transportation carriers;
- c. allow a large number of secular gatherings of more than 10 people, such as in liquor stores, home improvement stores, and transportation carriers, while prohibiting religious gatherings of more than 10 people; and
- d. are not narrowly tailored, and are not the least restrictive means to accomplish a compelling governmental interest.

68. On their face or as applied the Orders exempt from the gatherings ban a large number of secular businesses and activities that are not protected by the Constitution, while not providing a sufficiently equivalent exemption for Plaintiffs' First Amendment-protected activity.

69. On their face or as applied, the Orders impose a substantial burden upon Plaintiffs' free exercise of religion, subjecting them to fines and possible imprisonment for

exercising their religious belief that they commanded by God to gather together for religious worship in the building provided by God and long-dedicated to religious worship.

70. On its face or as applied, the Orders are not neutral, purporting to treat religious activity differently and less favorably than other categories of activity, including gatherings as defined by the Orders.

71. On their face or as applied the Orders are not generally applicable, prohibiting the churches' congregants from gathering for religious services while allowing gatherings for substantially similar secular conduct.

COUNT 2
(U.S. Const., First and Fourteenth Amendment – Establishment of Religion)

72. Plaintiffs hereby allege and incorporate by reference each and every allegation contained in paragraph 1 through 64 of this Verified Complaint as though fully set forth herein.

73. The prohibition by the Orders of more than 10 people in a faith-based gathering purports to establish religion by dictating under penalties of criminal sanctions that Bible Baptist and Solid Rock may only worship together indoors in groups of 10 or fewer people, outdoors in groups of 25 or fewer people, or worship online, thereby establishing a state-approved orthodoxy for religious worship.

74. On their face or as applied, the Orders:
- a. permit the State to display impermissible hostility towards the churches' gatherings that they do not display to other, secular gatherings;

- b. show impermissible favoritism towards secular gatherings over the churches' religious gatherings;
- c. excessively entangle the State of New Jersey with the manner, style, form, practices, or sacraments of Plaintiffs' religious worship; and
- d. establish an acceptable method for the Plaintiffs' religious exercise and worship, placing a numerical limitation on the scope of how the Plaintiffs' religious exercise and worship may occur, and approving only State-approved forms of worship;

COUNT 3

(U.S. Const., First and Fourteenth Amendment – Right to Assemble)

75. Plaintiffs hereby allege and incorporate by reference each and every allegation contained in paragraph 1 through 64 of this Verified Complaint as though fully set forth herein.

76. The Orders' ban on the Church's in-person, indoor religious worship services of more than 10 people while permitting larger gatherings for dozens of other, secular, activities does not serve any legitimate, rational, substantial, or compelling governmental interest.

77. As demonstrated by their many exemptions to the 10-people limit on gatherings, the State of New Jersey has alternative, less restrictive means to achieve any interest it may have in the numerical limit of the Orders upon the Plaintiffs' gatherings.

COUNT 4

(N.J. Const. art. I,)

78. Plaintiffs hereby allege and incorporate by reference each and every allegation contained in paragraph 1 through 64 of this Verified Complaint as though fully set forth herein.

79. The New Jersey Constitution provides even stronger protection for the free exercise of religion than the First Amendment when it guarantees:

No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretense whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right or has deliberately and voluntarily engaged to perform.

N. J. Const. art. I, ¶ 3.

80. Plaintiffs hold the religious belief that God through the *Holy Bible* that their failure to physically assemble as a church body is a sin in violation of God's commands as they interpret the *Holy Bible* in such verses as Hebrews 10:25.

81. The Orders curtailing their gathering to worship with more than 10 people deprives Plaintiffs of the inestimable privilege of worshipping Almighty God in a manner agreeable to their own consciences, substantially burdening the exercise of their faith.

82. The Orders treat Plaintiffs more restrictively than other, secular, entities, such as airline and trains, which are allowed to gather with more than 10 people.

83. Any interest the State of New Jersey has in halting the spread of the COVID-19 virus can be met by the same alternative means of social distances and compliance with

protective hygiene protocols that have been used throughout the time of the State of Emergency by those businesses, services, and workers deemed “Essential” by Defendants.

84. In the absence of declaratory and injunctive relief, the Plaintiffs’ right to freedom of religion and right to peaceably assemble will be irreparably harmed.

85. The Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs respectfully request the Court to enter judgment against Defendants as follows:

A. Granting the Plaintiffs a preliminary and permanent injunction enjoining Defendants or their designees or agents from enforcing the challenged Orders under any “social distancing” requirements different from those governing “essential” businesses or services;

B. Granting the Plaintiffs a declaratory judgment and preliminary and permanent injunction that the challenged Orders are unconstitutional, on their face and as applied to Plaintiffs;

C. An award of costs of this litigation, including reasonable attorneys’ fees, pursuant to 42 U.S.C. § 1988; and

D. Such further relief as the Court deems just and proper.

June 2, 2020

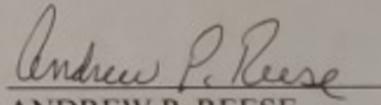
Respectfully submitted,

BIBLE BAPTIST CHURCH
SOLID ROCK BAPTIST CHURCH
PASTOR ANDREW REESE
PASTOR CHARLES CLARK, JR.
PASTOR CHARLES CLARK III

VERIFICATION

My name is Andrew P. Reese and I am Pastor of Bible Baptist Church of Clementon. I declare under penalty of perjury that the foregoing Verified Complaint for Declaratory Judgment and Injunctive Relief has been examined by me and that the factual allegations therein are true to the best of my information, knowledge, and belief. I further declare that I am duly authorized to make this Verification on behalf of Bible Baptist Church of Clementon.

Executed on this 1 day of June, 2020.



ANDREW P. REESE
Bible Baptist Church of Clementon
260 Berlin Road
Clementon, NJ 08021

VERIFICATION

My name is Charles Clark, Jr., and I am Co-Pastor of Solid Rock Baptist Church of West Berlin. I declare under penalty of perjury that the foregoing Verified Complaint for Declaratory Judgment and Injunctive Relief has been examined by me and that the factual allegations therein are true to the best of my information, knowledge, and belief. I further declare that I am duly authorized to make this Verification on behalf of Solid Rock Baptist Church of West Berlin.

Executed on this 15 day of June, 2020.


CHARLES CLARK, JR.
Solid Rock Baptist Church of West Berlin
420 South White Horse Pike
Berlin, NJ 8009

VERIFICATION

My name is Charles Clark III and I am Co-Pastor of Solid Rock Baptist Church of West Berlin. I declare under penalty of perjury that the foregoing Verified Complaint for Declaratory Judgment and Injunctive Relief has been examined by me and that the factual allegations therein are true to the best of my information, knowledge, and belief. I further declare that I am duly authorized to make this Verification on behalf of Solid Rock Baptist Church of West Berlin.

Executed on this 15 day of June, 2020.



CHARLES CLARK III
Solid Rock Baptist Church of West Berlin
420 South White Horse Pike
Berlin, NJ 8009

EXHIBITS LIST

EXHIBIT NO.	DESCRIPTION
Exhibit 1	Executive Order No. 103
Exhibit 2	Executive Order No. 104
Exhibit 3	Executive Order No. 107
Exhibit 4	Administrative Order No. 2020-4
Exhibit 5	Executive Order 142
Exhibit 6	Executive Order 148
Exhibit 7	Clark Letter
Exhibit 8	Gibbs Letter

Exhibit "1"

EXECUTIVE ORDER NO. 103

WHEREAS, Coronavirus disease 2019 ("COVID-19") is a contagious, and at times fatal, respiratory disease caused by the SARS-CoV-2 virus; and

WHEREAS, COVID-19 is responsible for the 2019 novel coronavirus outbreak, which was first identified in Wuhan, the People's Republic of China in December 2019 and quickly spread to the Hubei Province and multiple other countries; and

WHEREAS, symptoms of the COVID-19 illness include fever, cough, and shortness of breath, which may appear in as few as two or as long as 14 days after exposure, and can spread from person to person via respiratory droplets produced when an infected person coughs or sneezes; and

WHEREAS, on January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak a "public health emergency of international concern," which means "an extraordinary event which is determined to constitute a public health risk to other States through the international spread of disease and to potentially require a coordinated international response," and thereafter raised its global risk assessment of COVID-19 from "high" to "very high"; and

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services Secretary declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19; and

WHEREAS, as of March 9, 2020, according to the Centers for Disease Control and Prevention ("CDC"), there were more than 114,000 confirmed cases of COVID-19 worldwide, with over 4,000 of those cases having resulted in death; and

WHEREAS, as of March 9, 2020, there were more than 500 confirmed cases of COVID-19 in the United States, with 22 of those cases having resulted in death; and

goods and services necessary to address the public exigency where the Division of Purchase of Property provides preapproval in accordance with Treasury Circular 18-14-DPP; and

WHEREAS, in the event of a declared emergency pursuant to Treasury Circular 19-10-DPP, the threshold for delegated purchasing by individual State Departments is raised to \$100,000 such that purchases at or below that amount do not require prior approval or action by DPP; and

WHEREAS, the spread of COVID-19 may disrupt the timely delivery of State contracted goods or services, the immediate delivery and fulfillment of which is necessary for the life, safety, or health of the public; and

WHEREAS, the State of New Jersey has been working closely with the CDC, local health departments, and healthcare facilities to monitor, plan for and mitigate the spread of COVID-19 within the State; and

WHEREAS, through Executive Order No. 102, which I signed on February 3, 2020, I created the State's Coronavirus Task Force, chaired by the Commissioner of the New Jersey Department of Health ("DOH"), in order to coordinate the State's efforts to appropriately prepare for and respond to the public health hazard posed by COVID-19; and

WHEREAS, it is critical to prepare for and respond to suspected or confirmed COVID-19 cases in New Jersey, to implement appropriate measures to mitigate the spread of COVID-19, and to prepare in the event of an increasing number of individuals requiring medical care or hospitalization; and

WHEREAS, the State of New Jersey also acts as an employer with tens of thousands of employees, and the spread of COVID-19 requires preparedness for staffing shortages and flexibility in work rules to ensure that its employees can fully comply with all

medically appropriate measures while also ensuring the continuous delivery of State services performed by Executive branch agencies; and

WHEREAS, the continuous delivery of services at the county and municipal level performed by those governments and their employees is also essential; and

WHEREAS, the spread of COVID-19 within New Jersey constitutes an imminent public health hazard that threatens and presently endangers the health, safety, and welfare of the residents of one or more municipalities or counties of the State; and

WHEREAS, it is necessary and appropriate to take action against this public health hazard to protect and maintain the health, safety, and welfare of New Jersey residents and visitors; and

WHEREAS, the facts as set forth above and consultation with the Commissioner of DOH confirms that there exists a public health emergency in the State; and

WHEREAS, New Jersey's Consumer Fraud Act, N.J.S.A. 56:8-107 et seq., prohibits excessive price increases during a declared state of emergency, or for 30 days after the termination of the state of emergency; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, in order to protect the health, safety and welfare of the people of the State of New Jersey, DO DECLARE and PROCLAIM that a Public Health Emergency and State of Emergency exist in the State of New Jersey, and I hereby ORDER and DIRECT the following:

political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully with the State Director of Emergency Management and the Commissioner of DOH in all matters concerning this state of emergency.

5. The Coronavirus Task Force established under Executive Order No. 102 is continued with the Commissioner of DOH as the chair, and shall provide assistance on the State's efforts preparing for and responding to the public health hazard posed by COVID-19.

6. I authorize and empower the executive head of any agency or instrumentality of the State government with authority to promulgate rules to waive, suspend, or modify any existing rule, where the enforcement of which would be detrimental to the public welfare during this emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary for the duration of this Executive Order, subject to my prior approval and in consultation with the State Director of Emergency Management and the Commissioner of DOH. Any such waiver, modification, or suspension shall be promulgated in accordance with N.J.S.A. App. A:9-45.

7. All State agencies, and specifically the Departments of Banking and Insurance, Health, Human Services, Education, and the Civil Service Commission are authorized to take appropriate steps to address the public health hazard of COVID-19, including increasing access and eliminating barriers to medical care, protecting the health and well-being of students, and protecting the health and well-being of State, county, and municipal employees while ensuring the continuous delivery of State, county, and municipal services.

8. I authorize and empower the State Director of Emergency Management, in conjunction with the Commissioner of DOH, to order the evacuation of all persons, except for those emergency and governmental personnel whose presence the State Director deems necessary, from any area where their continued presence would present a danger to their health, safety, or welfare because of the conditions created by this emergency.

9. I authorize and empower the State Director of Emergency Management, in conjunction with the Commissioner of DOH, to utilize all property, equipment, and facilities owned, rented, operated, and maintained by the State of New Jersey to house and shelter persons who may need to be evacuated from a residence, dwelling, building, structure, or vehicle during the course of this emergency.

10. I authorize and empower the Adjutant General, in accordance with N.J.S.A. 38A:2-4 and N.J.S.A. 38A:3-6.1, to order to active duty such members of the New Jersey National Guard who, in the Adjutant General's judgment, are necessary to provide aid to those localities where there is a threat or danger to the public health, safety, and welfare and to authorize the employment of any supporting vehicles, equipment, communications, or supplies as may be necessary to support the members so ordered.

11. In accordance with the N.J.S.A. App. A:9-34 and N.J.S.A. App. A:9-51, I reserve the right to utilize and employ all available resources of the State government and of each and every political subdivision of the State, whether of persons, properties, or instrumentalities, and to commandeer and utilize any personal services and any privately-owned property necessary to protect against this emergency.

12. In accordance with N.J.S.A. App. A:9-40, no municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of this Order, or which will in any way interfere with or impede the achievement of the purposes of this Order.

13. In accordance with N.J.S.A. App. A:9-34, N.J.S.A. App. A:9-40.6, and N.J.S.A. 40A:14-156.4, no municipality or public or semipublic agency shall send public works, fire, police, emergency medical, or other personnel or equipment into any non-contiguous impacted municipality within this State, nor to any impacted municipality outside this State, unless and until such aid has been directed by the county emergency management coordinator or his or her deputies in consultation with the State Director of Emergency Management in conjunction with the Commissioner of DOH.

14. This Order shall take effect immediately and shall remain in effect until such time as it is determined by me that an emergency no longer exists.

GIVEN, under my hand and seal this
9th day of March,
Two Thousand and Twenty, and
of the Independence of the
United States, the Two
Hundred and Forty-Fourth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor

Exhibit “2”

Executive Order No. 104

EXECUTIVE ORDER NO. 104

WHEREAS, through Executive Order No. 102, which I signed on February 3, 2020, I created the State's Coronavirus Task Force, chaired by the Commissioner of the New Jersey Department of Health ("DOH"), in order to coordinate the State's efforts to appropriately prepare for and respond to the public health hazard posed by Coronavirus disease 2019 ("COVID-19"); and

WHEREAS, in light of the dangers posed by COVID-19, I issued Executive Order No. 103 (2020) on March 9, 2020, the facts and circumstances of which are adopted by reference herein, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, in accordance with N.J.S.A. App. A:9-34 and -51, I reserved the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, in accordance with N.J.S.A. App. A:9-40, I declared that, due to the State of Emergency, no municipality, county, or any agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of my Executive Orders, or which will in any way interfere with or impede their achievement; and

WHEREAS, on March 11, 2020, COVID-19 was declared to be a global pandemic by the World Health Organization; and

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency pursuant to his constitutional and statutory powers, including those granted by Sections 201 and 301 of the National Emergencies Act (50 U.S.C. § 1601, *et seq.*) and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5); and

WHEREAS, the President of the United States also determined on March 13, 2020, that the COVID-19 pandemic was of sufficient severity and magnitude to warrant an emergency determination under Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207; and

WHEREAS, as of March 16, 2020, according to the Centers for Disease Control and Prevention ("CDC"), there were more than 130,000 confirmed cases of COVID-19 worldwide, with over 6,500 of those cases having resulted in death; and

WHEREAS, as of March 16, 2020, there were more than 4,900 confirmed cases of COVID-19 in the United States, with 67 of those cases having resulted in death; and

WHEREAS, as of March 16, 2020, there were 178 positive cases of COVID-19 in New Jersey, spread across numerous counties; and

WHEREAS, social mitigation strategies for combatting COVID-19 requires every effort to reduce the rate of community spread of the disease; and

WHEREAS, as of March 15, 2020, the CDC recommends that for the next eight weeks, gatherings of 50 or more people be canceled or postponed throughout the United States; and

WHEREAS, public and private preschool programs, elementary and secondary schools, and institutions of higher education are locations where significant numbers of students, educators, and support staff gather, often in close proximity in classrooms, hallways, cafeterias, and gymnasiums; and

WHEREAS, suspending in-person preschool programs, K-12 education, and in-person instruction at institutions of higher education are part of the State's mitigation strategy to combat COVID-19 and reduce the rate of community spread; and

WHEREAS, my Administration is committed to ensuring that all students will continue to have access to a quality education, in addition to school meals that are provided or subsidized for students from low-income families; and

WHEREAS, casinos, racetracks, gyms, fitness centers, movie theaters, performing arts centers, other concert venues, nightclubs, and other entertainment centers, which are vital to the economic health of the State, are also locations where large numbers of individuals gather in close proximity; and

WHEREAS, many individuals also come into contact with common surfaces at gyms, fitness centers, and other entertainment centers; and

WHEREAS, suspending operations at these businesses is part of the State's mitigation strategy to combat COVID-19 and reduce the rate of community spread; and

WHEREAS, even on casino floors, where slot machines or other casino games may be several feet apart, many individuals come into contact with common surfaces; and

WHEREAS, in contrast to gaming at brick-and-mortar facilities, online gaming provides a safe mode of entertainment during a time when physical proximity to other individuals can be dangerous; and

WHEREAS, the CDC has advised that COVID-19 spreads most frequently through person-to-person contact when individuals are within six feet or less of one another; and

WHEREAS, as a result, the CDC has recommended that individuals practice "social distancing" to prevent community spread of the virus; and

WHEREAS, the CDC has defined social distancing as the practice of "remaining out of congregate settings, avoiding mass gatherings, and maintaining distance (approximately 6 feet or 2 meters) from others when possible"; and

WHEREAS, bars and restaurants are locations where significant numbers of individuals gather in close proximity, making adherence to social distancing protocols impossible or impracticable; and

WHEREAS, to mitigate community spread of COVID-19, it is necessary to limit the unnecessary movement of individuals in and around their communities and person-to-person interactions in accordance with CDC and DOH guidance; and

WHEREAS, on March 15, 2020, the Director of the National Institute of Allergy and Infectious Diseases, Dr. Anthony Fauci, called for "a dramatic diminution of the personal interaction that we see in restaurants and in bars," and recommended pursuing "[w]hatever it takes to do that"; and

WHEREAS, the provision of take-out and delivery services do not pose the same danger of widespread person-to-person contact while still preserving necessary food delivery services for New Jersey residents; and

WHEREAS, narrowing scope of service or hours of operation for restaurants and certain retail establishments permits individuals to access food, clothing, and other essential materials while also limiting unnecessary person-to-person contact; and

WHEREAS, it is critical to ensure that law enforcement resources, particularly those that might otherwise be required to respond to late-night incidents, not be unnecessarily diverted from responding to COVID-19 related issues and maintaining public safety; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. All gatherings of persons in the State of New Jersey shall be limited to 50 persons or fewer, excluding normal operations at airports, bus and train stations, medical facilities, office environments, factories, assemblages for the purpose of industrial or manufacturing work, construction sites, mass transit, or the purchase of groceries or consumer goods.

2. All public, private, and parochial preschool program premises, and elementary and secondary schools, including charter and renaissance schools, shall be closed to students beginning on Wednesday, March 18, 2020, and shall remain closed as long as this Order remains in effect.

3. All institutions of higher education shall cease in-person instruction beginning on Wednesday, March 18, 2020, and shall cease such in-person instruction as long as this Order remains in effect. The Secretary of the Office of Higher Education shall have the authority to grant a waiver to allow in-person instruction to students on a case-by-case basis where a compelling rationale to allow such access exists. The Secretary of the Office of Higher Education shall coordinate with institutions of higher education to determine appropriate student housing conditions for those students who reside in on-campus housing as their primary residence.

4. The Commissioner of the Department of Education ("DOE"), in consultation with the Commissioner of DOH, shall be authorized to permit schools to remain open on a limited basis for the provision of food or other essential, non-educational services, or for educational or child care services if needed in emergency situations after consultation with the Commissioner of DOH. The Commissioner of DOE shall also have the authority to close any other career or

training facilities over which he has oversight, after consultation with the Commissioner of DOH.

5. The Commissioner of DOE shall continue working with each public school district, and private and parochial schools as appropriate, to ensure that students are able to continue their educations during this time period through appropriate home instruction. Local school districts, charter schools, and renaissance schools, in consultation with the Commissioner of DOE, shall have the authority and discretion to determine home instruction arrangements as appropriate on a case-by-case basis to ensure all students are provided with appropriate home instruction, taking into account all relevant constitutional and statutory obligations.

6. The Secretary of the Department of Agriculture, in conjunction with the Commissioner of DOE, shall take all necessary actions to ensure that all students eligible for free or reduced meals shall continue to receive the services or supports necessary to meet nutritional needs during closures.

7. The following facilities are ordered closed to members of the public, effective 8:00 p.m. on Monday, March 16, 2020. These facilities are to remain closed to the public for as long as this Order remains in effect. The State Director of Emergency Management, who is the Superintendent of State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to this list:

- a. Casino gaming floors, including retail sports wagering lounges, and casino concert and entertainment venues. Online and mobile sports and casino gaming services may continue to be offered notwithstanding the closure of the physical facility.
- b. Racetracks, including stabling facilities and retail sports wagering lounges. Mobile sports wagering

services may continue to be offered notwithstanding the closure of the physical facility.

c. Gyms and fitness centers and classes.

d. Entertainment centers, including but not limited to, movie theaters, performing arts centers, other concert venues, and nightclubs.

8. Other non-essential retail, recreational, and entertainment businesses must cease daily operations from 8:00 p.m. until 5:00 a.m.. From 5:00 a.m. until 8:00 p.m., these businesses may remain open if they limit their occupancy to no more than 50 persons and adhere to social distancing guidelines. Examples of essential businesses excluded from this directive include: grocery/food stores, pharmacies, medical supply stores, gas stations, healthcare facilities and ancillary stores within healthcare facilities. The State Director of Emergency Management, who is the Superintendent of State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to the list of essential businesses and to the timelines applicable to operating hours.

9. All restaurants, dining establishments, and food courts, with or without a liquor license, all bars, and all other holders of a liquor license with retail consumption privileges, are permitted to operate their normal business hours, but are limited to offering only food delivery and/or take-out services. If alcoholic beverages are to be sold from a restaurant, dining establishment or bar with a liquor license, such sales shall be limited to original containers sold from the principal public barroom. All retail sales of alcoholic beverages by limited brewery licensees, restricted brewery licensees, plenary and farm winery licensees (and associated salesrooms), craft distillery licensees and cidery and meadery licensees must be in original containers and must be delivered by licensed entities and/or by customer pick up.

nature whatsoever, to cooperate fully in all matters concerning this Executive Order.

14. Penalties for violations of this Executive Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50.

15. This Order shall take effect immediately and shall remain in effect until revoked or modified by the Governor, who shall consult with the Commissioner of DOH as appropriate.

GIVEN, under my hand and seal this
16th day of March,
Two Thousand and Twenty, and of
the Independence of the United
States, the Two Hundred and
Forty-Fourth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor

Exhibit “3”

Executive Order No. 107

EXECUTIVE ORDER NO. 107

WHEREAS, through Executive Order No. 102 (2020), which I signed on February 3, 2020, I created the State's Coronavirus Task Force, chaired by the Commissioner of the New Jersey Department of Health ("DOH"), in order to coordinate the State's efforts to appropriately prepare for and respond to the public health hazard posed by Coronavirus disease 2019 ("COVID-19"); and

WHEREAS, in light of the dangers posed by COVID-19, I issued Executive Order No. 103 (2020) on March 9, 2020, the facts and circumstances of which are adopted by reference herein, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, in accordance with N.J.S.A. App. A:9-34 and -51, I reserved the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, in accordance with N.J.S.A. App. A:9-40, I declared that, due to the State of Emergency, no municipality, county, or any agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of my Executive Orders, or which will in any way interfere with or impede their achievement; and

WHEREAS, to further protect the health, safety, and welfare of New Jersey residents by, among other things, reducing the rate of community spread of COVID-19, I issued Executive Order No. 104 (2020) on March 16, 2020, the facts and circumstances of which are also adopted by reference herein, which established statewide social mitigation strategies for combatting COVID-19; and

WHEREAS, Executive Order No. 104 (2020) limited the scope of service and hours of operation for restaurants and certain retail establishments to balance the need to allow individuals to access food and other essential materials with the need to limit unnecessary person-to-person contact; and

WHEREAS, Executive Order No. 104 (2020) deemed a subset of businesses as "essential," including grocery/food stores, pharmacies, medical supply stores, gas stations, healthcare facilities, and ancillary stores within healthcare facilities, and it authorized the State Director of Emergency Management, who is the Superintendent of State Police, to make additions, amendments, clarifications, exceptions, and exclusions to that list; and

WHEREAS, Executive Order No. 104 (2020) made clear that such essential businesses may continue operating without limits on their scope of service or hours of operation, absent further amendments by the State Director of Emergency Management; and

WHEREAS, Executive Order No. 104 (2020) and subsequent Administrative Orders issued by the State Director of Emergency Management also placed restrictions on other businesses' scope of service and hours of operation, and also placed restrictions on the size of gatherings in the State; and

WHEREAS, as of March 20, 2020, according to the Centers for Disease Control and Prevention ("CDC"), there were more than 234,000 confirmed cases of COVID-19 worldwide, with over 9,800 of those cases having resulted in death; and

WHEREAS, as of March 20, 2020, there were more than 15,000 confirmed cases of COVID-19 in the United States, with at least 201 of those cases having resulted in death; and

WHEREAS, as of March 20, 2020, there were at least 890 positive cases of COVID-19 in New Jersey, with at least 11 of those cases having resulted in death; and

WHEREAS, social mitigation strategies for combatting COVID-19 require every effort to reduce the rate of community spread of the disease; and

WHEREAS, the CDC has advised that COVID-19 spreads most frequently through person-to-person contact when individuals are within six feet or less of one another; and

WHEREAS, as a result, the CDC has recommended that individuals practice "social distancing" to prevent community spread of the virus; and

WHEREAS, the CDC has defined social distancing as the practice of "remaining out of congregate settings, avoiding mass gatherings, and maintaining distance (approximately 6 feet or 2 meters) from others when possible"; and

WHEREAS, to mitigate community spread of COVID-19, it is necessary to limit the unnecessary movement of individuals in and around their communities and person-to-person interactions in accordance with CDC and DOH guidance; and

WHEREAS, the best way for New Jersey residents to keep themselves, their families, and their communities safe during the COVID-19 outbreak is to stay at home as much as possible; and

WHEREAS, as of March 15, 2020, the CDC recommends that for the next eight weeks, gatherings of 50 or more people be canceled or postponed throughout the United States; and

WHEREAS, as of March 16, 2020, the White House went further than the CDC had and recommended that Americans avoid social gatherings in groups of more than 10 people; and

WHEREAS, restricting the physical presence of individuals in office environments and work sites is critical to preventing future spread of COVID-19; and

WHEREAS, accommodating work-from-home arrangements is an effective means to ensure continuity of operations while also limiting person-to-person contact; and

WHEREAS, the CDC has recommended employers to establish policies and practices to increase the physical distance among employees and between employees; and

WHEREAS, permitting the workforce to work from home may reduce stress on the State's child care system; and

WHEREAS, as of March 19, 2020, I have instructed all State departments and agencies to utilize work-from-home arrangements for both essential and non-essential employees wherever feasible; and

WHEREAS, given the rapidly rising incidence of COVID-19, temporarily closing non-essential retail businesses will strengthen New Jersey's efforts to slow the spread of COVID-19; and

WHEREAS, even as we institute social distancing measures, the number of COVID-19 cases in New Jersey is likely to increase for the immediate future, meaning we must take all possible steps to preserve our health care system's capacity to treat those who require emergency or intensive care; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The operative paragraphs of Executive Order No. 104 (2020) are hereby superseded in full. The factual findings of Executive Order No. 104 (2020) remain applicable except to the extent they are in conflict with the factual findings in this or any intervening Executive Order.

2. All New Jersey residents shall remain home or at their place of residence unless they are 1) obtaining goods or services from essential retail businesses, as described in Paragraph 6; 2) obtaining takeout food or beverages from restaurants, other dining establishments, or food courts, pursuant to Paragraph 8; 3) seeking medical attention, essential social services, or assistance from law enforcement or emergency services; 4) visiting family or other individuals with whom the resident has a close personal relationship, such as those for whom the individual is a caretaker or romantic partner; 5) reporting to, or performing, their job; 6) walking, running, operating a wheelchair, or engaging in outdoor activities with immediate family members, caretakers, household members, or romantic partners while following best social distancing practices with other individuals, including staying six feet apart; 7) leaving the home for an educational, religious, or political reason; 8) leaving because of a reasonable fear for his or her health or safety; or 9) leaving at the direction of law enforcement or other government agency.

3. When in public, individuals must practice social distancing and stay six feet apart whenever practicable, excluding immediate family members, caretakers, household members, or romantic partners.

4. Individuals who have to travel pursuant to Paragraph 2 should only use public transportation only if they have no other feasible choice. Individuals who ride public transportation should abide by best social distancing practices, including making

all efforts to stand or sit six feet away from other riders and frequently use sanitizing products.

5. Gatherings of individuals, such as parties, celebrations, or other social events, are cancelled, unless otherwise authorized by any part of this Order. The State Director of Emergency Management, who is the Superintendent of the State Police, shall have the discretion to make clarifications and issue orders related to this provision.

6. The brick-and-mortar premises of all non-essential retail businesses must close to the public as long as this Order remains in effect. Essential retail businesses, listed below, are excluded from this directive and may remain open during their normal business hours. Essential retail businesses must, wherever practicable, provide pickup services outside or adjacent to their stores for goods ordered in advance online or by phone. Additionally, online and telephonic delivery services are permitted to the extent the retail business is authorized to operate an online or telephonic delivery service under existing law. The State Director of Emergency Management, who is the Superintendent of the State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to this list:

- a. Grocery stores, farmer's markets and farms that sell directly to customers, and other food stores, including retailers that offer a varied assortment of foods comparable to what exists at a grocery store;
- b. Pharmacies and alternative treatment centers that dispense medicinal marijuana;
- c. Medical supply stores;
- d. Retail functions of gas stations;

- e. Convenience stores;
- f. Ancillary stores within healthcare facilities;
- g. Hardware and home improvement stores;
- h. Retail functions of banks and other financial institutions;
- i. Retail functions of laundromats and dry-cleaning services;
- j. Stores that principally sell supplies for children under five years old;
- k. Pet stores;
- l. Liquor stores;
- m. Car dealerships, but only to provide auto maintenance and repair services, and auto mechanics;
- n. Retail functions of printing and office supply shops; and
- o. Retail functions of mail and delivery stores.

7. Any essential retail business whose brick-and-mortar premises remain open to the public shall abide by social distancing practices to the extent practicable while providing essential services. These include all reasonable efforts to keep customers six feet apart and frequent use of sanitizing products on common surfaces.

8. All restaurants, cafeterias, dining establishments, and food courts, with or without a liquor license, all bars, and all other holders of a liquor license with retail consumption privileges, are permitted to operate their normal business hours, but are limited to offering only food delivery and/or take-out services in accordance with their existing liquor licenses. If alcoholic beverages are to be sold from a restaurant, dining establishment or bar with a liquor license, such sales shall be

limited to original containers sold from the principal public barroom. The on-premises consumption of alcohol is prohibited. All retail sales of alcoholic beverages by limited brewery licensees, restricted brewery licensees, plenary and farm winery licensees (and associated salesrooms), craft distillery licensees and cidery and meadery licensees must be in original containers and must be sold through customer pick up and/or delivered by licensees in accordance with their existing licenses.

9. All recreational and entertainment businesses, including but not limited to the following list, must close to the public as long as this Order remains in effect. The State Director of Emergency Management, who is the Superintendent of State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to this list:

- a. Casino gaming floors, including retail sports wagering lounges, and casino concert and entertainment venues. Online and mobile sports and casino gaming services may continue to be offered notwithstanding the closure of the physical facility.
- b. Racetracks, including stabling facilities and retail sports wagering lounges. Mobile sports wagering services may continue to be offered notwithstanding the closure of the physical facility.
- c. Gyms and fitness centers and classes.
- d. Entertainment centers, including but not limited to, movie theaters, performing arts centers, other concert venues, and nightclubs.
- e. All indoor portions of retail shopping malls. Restaurants and other stores located within

h. All municipal, county, and State public libraries, and all libraries and computer labs at public and private colleges and universities.

10. All businesses or non-profits in the State, whether closed or open to the public, must accommodate their workforce, wherever practicable, for telework or work-from-home arrangements. For purposes of this order, "telework" means the practice of working from home or alternative locations closer to home through the use of technology that equips the individual to access necessary materials.

11. To the extent a business or non-profit has employees that cannot perform their functions via telework or work-from-home arrangements, the business or non-profit should make best efforts to reduce staff on site to the minimal number necessary to ensure that essential operations can continue. Examples of employees who need to be physically present at their work site in order to perform their duties include, but are not limited to, law enforcement officers, fire fighters, and other first responders, cashiers or store clerks, construction workers, utility workers, repair workers, warehouse workers, lab researchers, information technology maintenance workers, janitorial and custodial staff, and certain administrative staff.

12. All public, private, and parochial preschool program premises, and elementary and secondary schools, including charter and renaissance schools, shall remain closed to students as long as this Order remains in effect.

13. All institutions of higher education shall continue to cease such in-person instruction as long as this Order remains in effect. The Secretary of the Office of Higher Education shall have the authority to grant a waiver to allow in-person instruction to students on a case-by-case basis where a compelling rationale to

allow such access exists. The Secretary of the Office of Higher Education shall coordinate with institutions of higher education to determine appropriate student housing conditions for those students who reside in on-campus housing as their primary residence.

14. The Commissioner of the Department of Education ("DOE"), in consultation with the Commissioner of DOH, shall be authorized to permit schools to remain open on a limited basis for the provision of food or other essential, non-educational services, or for educational or child care services if needed in emergency situations after consultation with the Commissioner of DOH. The Commissioner of DOE shall also have the authority to close any other career or training facilities over which he has oversight, after consultation with the Commissioner of DOH.

15. The Commissioner of DOE shall continue working with each public school district, and private and parochial schools as appropriate, to ensure that students are able to continue their educations during this time period through appropriate home instruction. Local school districts, charter schools, and renaissance schools, in consultation with the Commissioner of DOE, shall have the authority and discretion to determine home instruction arrangements as appropriate on a case-by-case basis to ensure all students are provided with appropriate home instruction, taking into account all relevant constitutional and statutory obligations.

16. The Secretary of the Department of Agriculture, in conjunction with the Commissioner of DOE, shall take all necessary actions to ensure that all students eligible for free or reduced meals shall continue to receive the services or supports necessary to meet nutritional needs during closures.

17. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the provision of health care or medical services to members of the public.

18. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way access to essential services for low-income residents, including but not limited to food banks.

19. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of newspapers, television, radio, and other media services.

20. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of law enforcement agencies.

21. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of the federal government, or the movement of federal officials in New Jersey while acting in their official capacity.

22. In accordance with N.J.S.A. App. A:9-33, et seq., as supplemented and amended, the State Director of Emergency Management, who is the Superintendent of State Police, through the police agencies under his control, to determine and control the direction of the flow of vehicular traffic on any State or interstate highway, municipal or county road, and any access road, including the right to detour, reroute, or divert any or all traffic and to prevent ingress or egress from any area that, in the State Director's discretion, is deemed necessary for the protection of the health, safety, and welfare of the public, and to remove parked or abandoned vehicles from such roadways as conditions warrant.

23. The Attorney General, pursuant to the provisions of N.J.S.A. 39:4-213, shall act through the Superintendent of State Police, to determine and control the direction of the flow of

vehicular traffic on any State or interstate highway, municipal or county road, and any access road, including the right to detour, reroute, or divert any or all traffic, to prevent ingress or egress, and to determine the type of vehicle or vehicles to be operated on such roadways. I further authorize all law enforcement officers to enforce any such order of the Attorney General or Superintendent of State Police within their respective municipalities.

24. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully in all matters concerning this Executive Order.

25. Penalties for violations of this Executive Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50.

26. This Order shall take effect on Saturday, March 21, 2020, at 9:00 p.m., and shall remain in effect until revoked or modified by the Governor, who shall consult with the Commissioner of DOH as appropriate.

GIVEN, under my hand and seal this
21st day of March,
Two Thousand and Twenty, and
of the Independence of the
United States, the Two
Hundred and Forty-Fourth.

[seal]

/s/ Philip D. Murphy
Governor

Attest:

/s/ Matthew J. Platkin
Chief Counsel to the Governor

Exhibit “4”

Administrative Order No. 2020-4

STATE OF NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY DIVISION OF NEW JERSEY STATE
POLICE OFFICE OF EMERGENCY MANAGEMENT

ADMINISTRATIVE ORDER

GATHERINGS

No. 2020-4

WHEREAS, on March 9, 2020, through Executive Order No. 103, the facts and circumstances of which are adopted by reference herein, the Governor declared both a Public Health Emergency and a State of Emergency throughout the State due to the public health hazard posed by Coronavirus disease 2019 (COVID-19); and

WHEREAS, to further protect the health, safety, and welfare of New Jersey residents by, among other things, reducing the rate of community spread of COVID-19, the Governor issued Executive Order No. 107 (2020) on March 21, 2020, the facts and circumstances of which are also adopted by reference herein, which established enhanced social mitigation strategies for combatting COVID-19; and

WHEREAS, Executive Order No. 107 cancelled gatherings of individuals, such as parties, celebrations, or other social events, unless otherwise authorized by Executive Order No. 107; and

WHEREAS, pursuant to paragraph 5 of Executive Order No. 107 (2020), the Governor granted the State Director of Emergency Management, who is the

Superintendent of State Police, the discretion to make clarifications and issue orders

related to the provisions regarding the gatherings of individuals;

NOW, THEREFORE, I, Patrick J. Callahan, State Director of Emergency Management, hereby ORDER as follows:

1. Pursuant to paragraph 5 of Executive Order No. 107 (2020), it is hereby clarified that gatherings of 10 persons or fewer are presumed to be in compliance with the terms and intentions of the Executive Order, unless clear evidence exists to the contrary.
2. This ORDER shall take effect concurrently with the effective date and time of Executive Order No. 107 (2020), which is Saturday, March 21, 2020 at 9:00 p.m., and shall remain in effect for as long as Executive Order No. 107 (2020) remains in effect or until I issue a subsequent amending Administrative Order.

March 21, 2020

Colonel Patrick J. Callahan

State Director of Emergency Management

Exhibit “5”

Executive Order 142

EXECUTIVE ORDER NO. 142

WHEREAS, in light of the dangers posed by Coronavirus disease 2019 ("COVID-19"), I issued Executive Order No. 103 (2020) on March 9, 2020, the facts and circumstances of which are adopted by reference herein, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, the Public Health Emergency declared in Executive Order No. 103 (2020) has been twice extended, through Executive Order No. 119 (2020), which I signed on April 7, 2020, and through Executive Order No. 138 (2020), which I signed on May 6, 2020, and continues to exist today; and

WHEREAS, in accordance with N.J.S.A. App. A:9-34 and -51, I reserve the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, as COVID-19 continued to spread across New Jersey and an increasing number of individuals required medical care or hospitalization, I issued a series of Executive Orders pursuant to my authority under the New Jersey Civilian Defense and Disaster Control Act and the Emergency Health Powers Act, to protect the public health, safety, and welfare against the emergency created by COVID-19, including Executive Order Nos. 104-133, Executive Order Nos. 135-138, and Executive Order Nos. 140-141 (2020), the facts and circumstances of which are all adopted by reference herein; and

WHEREAS, among other measures to protect the health, safety, and welfare of New Jersey residents, Executive Order No. 122 (2020) prohibited non-essential construction projects from continuing in the State, given the risk of transmission at such construction sites among the workers; and

WHEREAS, to further limit the spread of COVID-19 through person-to-person contact, I issued Executive Order No. 107 (2020), which canceled all gatherings of individuals, and which thereby prohibited everything from informal events such as parties and celebrations to organized events of any kind, unless otherwise authorized; and

WHEREAS, the State Director of Emergency Management, who is the Superintendent of the State Police, issued Administrative Order No. 2020-4 to establish that gatherings of 10 persons or fewer are presumed to be in compliance with Executive Order No. 107 (2020); and

WHEREAS, while Administrative Order No. 2020-4 acknowledged there may be circumstances in which clear evidence showed an impermissible gathering was happening even if 10 persons or fewer were in attendance, law enforcement has not identified any such situations in practice, and instead is consistently enforcing violations of the prohibition on gatherings only where there have been more than 10 people in attendance; and

WHEREAS, in addition to limiting person-to-person contact at construction sites and gatherings, I also established statewide social mitigation strategies in Executive Order No. 107 (2020) that included closing the brick-and-mortar premises of non-essential retail businesses to the public; and

WHEREAS, the Centers for Disease Control and Prevention ("CDC") has now recommended that all residents wear cloth face coverings in public settings where other social distancing measures are difficult to maintain, particularly in areas of significant community-based transmission; and

WHEREAS, the CDC has also recommended certain cleaning and disinfecting procedures for businesses to reduce potential spread of COVID-19 to staff and members of the public; and

WHEREAS, as the rate of reported new cases of COVID-19 in New Jersey decreases, including a reduction in the total number of individuals being admitted to hospitals for COVID-19, the State can begin to take certain steps to lift certain restrictions that were designed to limit person-to-person contact; and

WHEREAS, even as the rate of reported new cases of COVID-19 decreases, the ongoing risks presented by COVID-19 mean that a considerable number of the State's current measures must remain in place, both to reduce additional new infections and to save lives, until additional metrics - such as expanded testing and use of contact tracing - have been satisfied; and

WHEREAS, given the decrease in the rate of reported new cases of COVID-19, permitting non-essential construction projects to resume subject to strict social distancing measures, allowing for gatherings at which individuals remain in their closed vehicles, and authorizing curbside pickup at non-essential retail businesses are each measures that are appropriately tailored to the current risk to public health and safety; and

WHEREAS, construction sites are generally limited to workers, rather than customers and other members of the public, and so involve less risk of significant transmission of COVID-19 in the community; and

WHEREAS, although gatherings generally present a significant risk of person-to-person transmission, attendees at gatherings who remain in their vehicles and therefore do not come into significant in-person contact during the gathering pose a lower threat to public health and safety, but permitting individuals to leave their

vehicle or open their windows or roofs when in proximity with other individuals could result in significant person-to-person contact, meaning that there must be careful limits whenever individuals gather while remaining in their vehicles; and

WHEREAS, permitting curbside pickup at non-essential retail businesses is reasonable in that it avoids unnecessary contact between customers and staff in enclosed spaces, and instead only allows for the similar amount of limited contact that might happen when products are being delivered to a residence; and

WHEREAS, by contrast, the extensive interactions that would happen at in-person gatherings and that would happen from in-store retail operations continue to present a significant risk, and so the general ban on gatherings and the restrictions on in-store operations for non-essential retail businesses cannot be lifted at this time; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq. and N.J.S.A. App. A:9-33 et seq., and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The physical operations of all construction projects that were not designated as essential in Executive Order No. 122 (2020) are permitted to resume, subject to the conditions in paragraph 2 of this Order.

wear gloves while on the premises. Businesses must provide, at their expense, such face coverings and gloves for their employees. If a visitor refuses to wear a cloth face covering for non-medical reasons and if such covering cannot be provided to the individual by the business at the point of entry, then the business must decline entry to the individual. Nothing in the stated policy should prevent workers or visitors from wearing a surgical-grade mask or other more protective face covering if the individual is already in possession of such equipment, or if the businesses is otherwise required to provide such worker with more protective equipment due to the nature of the work involved. Where an individual declines to wear a face covering on the premises due to a medical condition that inhibits such usage, neither the business nor its staff shall require the individual to produce medical documentation verifying the stated condition;

- i. Require infection control practices, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal;
- j. Limit sharing of tools, equipment, and machinery;
- k. Where running water is not available, provide portable washing stations with soap and/or alcohol-based hand sanitizers that have greater than 60% ethanol or 70% isopropanol;

- l. Require frequent sanitization of high-touch areas like restrooms, breakrooms, equipment, and machinery;
- m. When the worksite is an occupied residence, require workers to sanitize work areas and keep a distance of at least six feet from the occupants; and
- n. Place conspicuous signage at entrances and throughout the worksite detailing the above mandates.

3. Paragraph 2 of Executive Order No. 122 (2020) is hereby superseded in full. Paragraph 3 of that Order is hereby superseded to the extent that it applied to businesses engaged in essential construction projects. New Jersey Office of Emergency Management (NJOEM) Administrative Order No. 2020-11 is hereby superseded in full.

4. Any gathering that adheres to all of the following rules does not violate Paragraph 5 of Executive Order No. 107 (2020):

- a. Attendees participating in the gathering must arrive in a vehicle and they must remain in that same vehicle during the entire gathering;
- b. Each attendee's vehicle must remain entirely closed at all times, meaning that the windows, doors, sunroofs, and tops of the vehicle must be closed at all times, unless:
 - i. The vehicle is more than six feet from any other vehicle or individual, except for, as applicable, the limited number of individuals organizing or maintaining the gathering; or

7. Nothing in Paragraph 4 of this Order shall prevent an individual from leaving a vehicle, opening a vehicle's windows, sunroofs, doors, and/or tops, and/or approaching a vehicle, if done to protect their health or safety or the health or safety of another individual, or to access a restroom.

8. Where a gathering does not adhere to Paragraph 4 of this Order, gatherings of 10 persons or fewer are in compliance with the terms of Section 5 of Executive Order No. 107 (2020), while gatherings of more than 10 persons are in violation of that Executive Order.

9. Non-essential retail businesses are permitted to reopen to the public, but only where they adopt policies that include, at minimum, the following requirements:

- a. Customers shall not be permitted to enter the brick-and-mortar premises, but shall be permitted to pick up goods outside of the establishment that they have already ordered ("curbside pickup");
- b. In-store operations shall be limited, wherever feasible, to those employees who are responsible for the operations required for curbside pickup;
- c. Customer transactions shall be handled in advance by phone, email, facsimile, or other means that avoid person-to-person contact, wherever feasible;
- d. Customers shall notify the retailer by text message, email, or phone once they arrive, whenever feasible, or make best efforts to schedule their arrival time in advance. The customer shall be asked to remain in their vehicle, if arriving by car, until store staff delivers the purchase;

- e. Designated employees shall bring goods outside of the retail establishment and place the goods directly in a customer's vehicle whenever feasible; and
- f. Retail businesses operating in shopping malls are permitted to operate by curbside pickup, in accordance with the other requirements of this paragraph, but employees must bring the goods to customers at the exterior of the mall and shall place them directly in a customer's vehicle whenever feasible. The indoor portions of shopping malls shall remain closed to the public, consistent with Executive Order No. 107 (2020).

Additionally, the policies described in this paragraph should also ensure that non-essential retail business employers do the following, at a minimum:

- g. Require infection control practices, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal;
- h. Provide employees break time for repeated handwashing throughout the workday;
- i. Provide sanitization materials, such as hand sanitizer and sanitizing wipes, to staff;
- j. Require frequent sanitization of high-touch areas to which workers have access; and
- k. Require workers to wear cloth face coverings and gloves when interacting with other workers or customers and require workers to wear gloves when in contact with customers or goods. Businesses must provide, at their expense, such face coverings

13. Penalties for violations of this Executive Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50.

14. Paragraphs 4-8 shall take effect immediately and Paragraphs 1-3 and 9 shall take effect at 6:00 a.m. on Monday, May 18, 2020. This Order shall remain in effect until revoked or modified by the Governor.

GIVEN, under my hand and seal this
13th day of May,
Two Thousand and Twenty, and of
the Independence of the United
States, the Two Hundred and
Forty-Fourth.

[seal]

/s/ Philip D. Murphy
Governor

Attest:

/s/ Matthew J. Platkin
Chief Counsel to the Governor

Exhibit “6”

Executive Order 148

EXECUTIVE ORDER NO. 148

WHEREAS, in light of the dangers posed by Coronavirus disease 2019 ("COVID-19"), I issued Executive Order No. 103 on March 9, 2020, the facts and circumstances of which are adopted by reference herein, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, through Executive Order Nos. 119 and 138 (2020), issued on April 7, 2020, and May 6, 2020, respectively, the facts and circumstances of which are adopted by reference herein, I declared that the COVID-19 Public Health Emergency continued to exist and declared that all Executive Orders and Administrative Orders adopted in whole or in part in response to the COVID-19 Public Health Emergency remained in full force and effect; and

WHEREAS, in accordance with N.J.S.A. App. A:9-34 and -51, I reserve the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, as COVID-19 continued to spread across New Jersey and an increasing number of individuals required medical care or hospitalization, I issued a series of Executive Orders pursuant to my authority under the New Jersey Civilian Defense and Disaster Control Act and the Emergency Health Powers Act, to protect the public health, safety, and welfare against the emergency created by COVID-19, including Executive Order Nos. 104-133, Nos. 135-138, and Nos. 140-147 (2020), the facts and circumstances of which are all adopted by reference herein; and

WHEREAS, among these actions, and in recognition that the Centers for Disease Control and Prevention ("CDC") has advised that social mitigation strategies for combatting COVID-19 require

every effort to reduce the rate of community spread of the disease and that COVID-19 spreads most frequently through person-to-person contact when individuals are within six feet or less of one another, I issued Executive Order No. 107 (2020) to order steps to mitigate community spread of COVID-19; and

WHEREAS, to further limit community spread from person-to-person contact through use of social mitigation measures, Executive Order No. 107 (2020) required, with limited exceptions, New Jersey residents to remain in their place of residence, cancelled all gatherings, and closed all recreational and entertainment businesses; and

WHEREAS, as the rate of reported new cases of COVID-19 in New Jersey decreases, including a reduction in the total number of individuals being admitted to hospitals for COVID-19, the State can begin to take certain steps to lift certain restrictions that were designed to limit person-to-person contact; and

WHEREAS, even as the rate of reported new cases of COVID-19 decreases, the ongoing risks presented by COVID-19 mean that a considerable number of the State's current measures must remain in place, both to reduce additional new infections and to save lives, until additional metrics - such as expanded testing and use of contact tracing - have been satisfied; and

WHEREAS, after consultation with officials from the Department of Health ("DOH"), I announced a multi-stage New Jersey's Road Back Plan for the methodical and strategic reopening of businesses and activities based on scientific data and metrics concerning the level of disease transmission risk and essential classification; and

spread and prevent future outbreaks of COVID-19 and protect the health, safety, and welfare of New Jersey residents; and

WHEREAS, maintaining the overall social distancing and mitigation requirements in place while gathering in open-air outdoor spaces, particularly by maintaining a six-foot distance from other individuals, is imperative to continuing to reduce the ongoing risk of community spread of COVID-19; and

WHEREAS, as public health experts have observed, the higher the number of people an individual interacts with at a gathering contribute to a greater risk of COVID-19 spread, and so large in-person gatherings where it is difficult for individuals to remain spaced six feet apart or more pose an increased risk, which also means that outdoor activities should be prioritized where social distancing can be maintained as much as possible; and

WHEREAS, in order to reduce the continued risk of widespread transmission of COVID-19 at large gatherings, a number of other states that have begun to relax restrictions on gatherings of 10 people or more have imposed a limit on outdoor gatherings up to 25 people, including Pennsylvania, even as states still maintain more stringent requirements for gatherings indoors; and

WHEREAS, it is likewise appropriate to limit outdoor gatherings in our State to no more than 25 people to prevent increased transmission through super-spreading events and large community gatherings; and

WHEREAS, even as the State allows outdoor gatherings in open-air spaces and recreational campgrounds, due to the ongoing risk of community spread of COVID-19, the extensive interactions that occur at gatherings in indoor places and certain indoor retail, recreational, and entertainment operations continue to

present a significant risk, and so the prohibition of indoor gatherings of more than 10 individuals, and the restrictions on the indoor operations of certain retail, recreational, and entertainment businesses, have not been lifted at this time; and

WHEREAS, the State's restrictions on gatherings are tailored to the harms they present, regardless of the purpose of any such gathering, meaning that indoor in-person gatherings are limited to 10 persons, outdoor in-person gatherings are limited to 25 persons so long as all persons remain six feet apart at all times, and any number of individuals may participate in a gathering where all participants remain in their vehicles, given the relative risks of COVID-19 transmission presented by each scenario; and

WHEREAS, recreational campgrounds in the State provide popular outdoor lodging and recreation options during the summer months that allow for limited person-to-person contact and involve appropriate social distancing measures, and thus can also resume consistent with the State's framework on outdoor recreation and the relative risks of COVID-19 transmission; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Any gathering that adheres to all of the following rules does not violate Paragraph 5 of Executive Order No. 107 (2020):

- a. The gathering takes place outdoors, whether on public or private property, and all attendees remain outdoors at all times during the gathering, with the sole exception of restroom use;
- b. Open-air rain tarps, tents, and other outdoor structures shall be allowed solely for the purpose of protecting against foul weather or for shade;
- c. The capacity of the gathering must be limited to no more than 25 people at the same time;
- d. All attendees at the gathering are required to be six feet apart from other attendees at all times, excluding immediate family members, caretakers, household members, or romantic partners;
- e. There may be no contact between attendees, excluding immediate family members, caretakers, household members, or romantic partners, and no organized or contact sports shall be allowed;
- f. All individuals at the gathering should wear face coverings at all times where other social distancing measures are difficult to maintain, in accordance with CDC recommendations, except where doing so would inhibit the individual's health or where the individual is under two years of age, and they must wear such face coverings where required by another Executive Order;

- g. If there are individuals organizing or maintaining the gathering, they should, where applicable, demarcate six feet of spacing in the area of the gathering to demonstrate appropriate spacing for social distancing, such as through the placement of cones, flags, or other markings;
- h. If seating is provided, such as chairs or mats, all seating must be limited to single individuals, except for immediate family members, caretakers, household members, or romantic partners, and must be placed six feet apart at all times, and such seating must be sanitized before and after that individual's use in accordance with CDC guidelines;
- i. If any physical items, including equipment, are provided, such items may not be shared by anyone except for immediate family members, caretakers, household members, or romantic partners, and such physical items must be sanitized before and after use; and
- j. To the degree the gathering requires pre-payment, or seeks donations of any kind, contactless options for pre-payment or donation, such as online or by telephone, must be offered wherever feasible.

2. Any outdoor recreational business or activity permitted to reopen to the public or their members under Paragraph 1 of Executive Order No. 147 (2020), and any charter fishing services and for-hire vessels permitted to reopen to the public under Paragraph 1 of Executive Order No. 146 (2020), must adopt policies that limit capacity to, at most, the number that ensures all

individuals remain six feet apart at all times, but at no times shall that limit exceed 25 people. Any capacity limits imposed on them by Executive Order Nos. 146 and 147 (2020) are hereby superseded, but all remaining requirements in those Orders remain in full force and effect.

3. Where a recreational or entertainment business organizes and/or maintains a gathering that adheres to the requirements of Paragraph 1 of this Order, it shall not be a violation of Paragraph 9 of Executive Order No. 107 (2020).

4. Gatherings authorized by Paragraph 1 of this Order are permitted at State Parks and Forests, county and municipal parks, public and private beaches, boardwalks, lakes, and lakeshores; however, consistent with Executive Order Nos. 108 and 133 (2020), counties and municipalities may impose additional restrictions at county and municipal parks in response to COVID-19. Paragraphs 3 and 7 of Executive Order No. 133 (2020) and Paragraph 3 of Executive Order No. 143 (2020) are hereby superseded to the extent that they prohibit outdoor gatherings of no more than 25 people. All remaining requirements in those Orders, including the prohibition of special events at public and private beaches, boardwalks, lakes, and lakeshores such as festivals, concerts, fireworks, and movies, remain in full force and effect.

5. Where a gathering takes place indoors, or otherwise does not adhere to either the requirements of Paragraph 1 of this Order or to the requirements of Executive Order No. 142 (2020) relating to car gatherings, then gatherings of 10 persons or fewer remain in compliance with Paragraph 5 of Executive Order No. 107 (2020), while gatherings of more than 10 persons remain in violation of that Executive Order.

6. Nothing in this Order shall prevent an individual at a gathering from coming within six feet of another person, or going indoors, if done to protect their health or safety or the health or safety of another individual.

7. Nothing in this Order shall prevent professional athletes from fulfilling their job duties, including when those job duties may require person-to-person contact, consistent with Paragraph 10 of Executive Order No. 107 (2020).

8. Notwithstanding Paragraph 12 of Executive Order No. 107 (2020), schools may allow individuals, including students, on to their premises, but only to engage in the passive recreational activities authorized by Paragraph 1 of Executive Order No. 133 (2020) or to participate in a gathering authorized by Executive Order No. 142 (2020) or by this Order.

9. All private recreational campgrounds are permitted to reopen to the public, but shall adopt policies that include, at a minimum, the following requirements:

- a. Require that individuals maintain a six-foot distance from other individuals that are not immediate family members, caretakers, household members, or romantic partners;
- b. Establish appropriate site-specific physical distancing between occupied fixed camping units, including but not limited to all cottages, cabins, and tent and RV camping sites;
- c. Require that reservations, cancellations and pre-payments be made via electronic or telephone reservation systems to limit physical interactions. Such policies shall, wherever possible, consider

populations that do not have access to internet service or credit cards;

- d. Install a physical barrier, such as a shield guard, between visitors and employees wherever feasible or otherwise ensuring six feet of distance between those individuals;
- e. Limit the use of equipment rented or otherwise provided by the campground to one person at a time, excluding immediate family members, caretakers, household members, or romantic partners;
- f. Demarcate and post signs that denote six feet of spacing in all public spaces, communal areas, and other applicable areas, whenever possible;
- g. Employees, visitors, and other individuals should wear face coverings in any setting at recreational campgrounds where other social distancing measures are difficult to maintain, except where doing so would inhibit that individual's health, or where the individual is under two years of age;
- h. Require infection control practices, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal;
- i. Provide employees break time for repeated handwashing throughout the workday;
- j. Provide sanitization materials, such as hand sanitizer and sanitizing wipes, to employees and visitors;

- k. Limit occupancy in restrooms and shower facilities that remain open to avoid over-crowding and maintain social distancing through signage and, where practicable, the utilization of attendants to monitor capacity;
- l. Require frequent sanitization of high-touch areas including, at minimum, the following cleaning protocols:
 - i. Routinely clean and disinfect all high-touch areas in accordance with the DOH and CDC guidelines, particularly in spaces that are accessible to employees, visitors, or other individuals, including, but not limited to, restroom and shower facilities, counter tops, hand rails, door knobs, other common surfaces, safety equipment, and other frequently touched surfaces including employee used equipment, and ensure cleaning procedures following a known or potential exposure in compliance with CDC recommendations;
 - ii. Clean and disinfect equipment that is rented, or otherwise provided to visitors in accordance with CDC and DOH guidelines after each use; and
 - iii. Train and equip employees to perform the above protocols effectively and in a manner that promotes the safety of the visitors and staff;

- m. Place additional restrictions on areas of the campground, as necessary, to limit person-to-person interactions and facilitate appropriate social distancing;
 - n. Immediately separate and send home workers who appear to have symptoms consistent with COVID-19 illness upon arrival at work or who become sick during the day;
 - o. Promptly notify workers of any known exposure to COVID-19 at the worksite, consistent with the confidentiality requirements of the Americans with Disabilities Act and any other applicable laws;
 - p. Clean and disinfect the worksite in accordance with CDC guidelines when a worker at the site has been diagnosed with COVID-19 illness; and
 - q. Continue to follow guidelines and directives issued by the DOH, the CDC and the Occupational Health and Safety Administration, as applicable, for maintaining a clean, safe and healthy work environment.
10. The following shall remain closed to the public at recreational campgrounds:
- a. Picnic areas;
 - b. Playgrounds;
 - c. Pavilions; and
 - d. Other buildings, amenities, or facilities, except for restrooms and shower facilities.

11. The Department of Environmental Protection shall prepare and publish within 15 days of the effective date of this Order a plan for the phased reopening of all recreational campgrounds located in any State Park and Forest in a manner that is protective of public health, safety, and the environment, and shall apply, at minimum, the policies provided in paragraphs 9 and 10 of this Order.

12. County and municipally-owned recreational campgrounds are permitted to reopen, but the counties and municipalities shall apply, at minimum, the policies provided in paragraphs 9 and 10 of this Order at any county and municipally-owned recreational campground that are open to the public; however, consistent with Executive Order Nos. 108 and 133 (2020), counties and municipalities may impose additional restrictions at county and municipally-owned recreational campgrounds in response to COVID-19.

13. Paragraph 6 of Executive Order No. 133 (2020) is hereby superseded to the extent it closes recreational campgrounds, but all remaining requirements in that Order remain in full force and effect.

14. The State Director of Emergency Management, who is the Superintendent of State Police, shall have the discretion to make additions, amendments, clarifications, exceptions and exclusions to the terms of this Order.

15. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of

any nature whatsoever, to cooperate fully in all matters concerning this Order, and to cooperate fully with Administrative Orders issued pursuant to this Order.

16. No municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of this Order, or which will or might in any way interfere with or impede its achievement.

17. Penalties for violations of this Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50.

18. This Order shall take effect immediately, and shall remain in effect until revoked or modified by the Governor, who shall consult with the Commissioner of DOH as appropriate.

GIVEN, under my hand and seal this
22nd day of May,
Two Thousand and Twenty, and
of the Independence of the
United States, the Two
Hundred and Forty-Fourth.

[seal]

/s/ Philip D. Murphy
Governor

Attest:

/s/ Matthew J. Platkin
Chief Counsel to the Governor

Exhibit “7”

Clark Letter

Governor Murphy
Page 2

The First Amendment guarantees our rights and religious liberty. The New Jersey Constitution guarantees our religious liberty. The grocery store, hardware store, pet store, and liquor store do not have the same guaranteed rights as churches. The Founding Fathers put churches at the front of the line. Sadly, we have been taken out of line. This is unconstitutional and discriminatory against the churches of New Jersey. Our religious rights must be respected.

The Bible requires us to assemble. It is part of our faith to gather as a church. As Americans, we hold dear our religious rights. These rights must be preserved and passed to our children. Please do not infringe on our rights. Please immediately list churches as essential.

I am a life-long citizen of New Jersey. Solid Rock Baptist Church is a membership of New Jersey citizens, and they are great citizens. We are patriotic. We love our state and support our leaders. We support law enforcement. Please do not put us in the position of being at odds with our leaders. We are not looking for a conflict. However, we will stand for our religious rights here in New Jersey.

I am asking you to make churches essential, today, and take away this point of conflict for us.

Although we have not met, I hope to meet you in the near future. If I can ever be of service to you, please allow me the privilege. God bless you, your family, and our great state of New Jersey!

Sincerely,



Charles Clark III
Co-Pastor of Solid Rock Baptist Church
Berlin, New Jersey

Exhibit “8”

Gibbs Letter



GIBBS & ASSOCIATES LAW FIRM, LLC

May 18, 2020

SENT VIA US MAIL AND ELECTRONIC MAIL

Governor Phil Murphy
Office of Governor
PO Box 001
Trenton, NJ 08625

Re: Constitutional Right to Conduct In-Person Worship Services

Dear Governor Murphy:

I am writing you on behalf of our client, Pastor Charles Clark III and the congregation of the Solid Rock Baptist Church in Berlin, New Jersey (hereafter "Solid Rock"). Attorney Brian Tome of Reilly, McDevitt & Henrich, P.C. is serving as local counsel for our firm in this matter. I write to address important concerns of this church, and many other churches in New Jersey.

You have indicated through executive orders that churches in the State of New Jersey are non-essential and must remain closed. This misrepresentation of churches should be addressed post haste. That religious assemblies, guaranteed by the First Amendment and every state's constitution, are not considered essential services while New Jersey categorizes liquor stores, marijuana dispensaries, many stores and many businesses as essential is completely indefensible from a legal and practical viewpoint. Hundreds of pastors and churches believe that they have a constitutional right to worship. The United States Supreme Court stated: "Man's relation to his God was made no concern of the State. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views." *United States v. Ballard* (1944) 322 U.S. 78, at page 87.

This recategorization of religious assemblies is urgently needed now to assist the millions of people who are concerned, depressed, and reaching out for comfort during this horrific pandemic with its attendant displacement of our community norms. Solid Rock believes it can assemble for religious worship in a manner that will both protect congregations and give them hope and comfort, all in furtherance of this Administration's goals. We have been developing assembly policies with clear guidelines that will meet or exceed CDC recommendations for safety. Solid Rock plans to implement many of these guidelines to ensure safe worship services for all involved.



Governor Phil Murphy

May 18, 2020

Page 2 of 5

We believe that any health and safety concern the State of New Jersey has about a safely conducted indoor religious gathering would logically be present at all other exempted indoor activities. The lack of logic on how exempt businesses such as airports, bus and train stations, and assemblages for industrial or manufacturing work would pose less of a health risk than would church gatherings was extremely troubling to a Sixth Circuit panel last week. That Federal Court of Appeals was considering Kentucky's virtually identical executive order which, like Executive Order No. 107, banned gathering for, among other activities, religious worship, but permitted many secular gatherings.

[T]he orders do not permit soul-sustaining group services of faith organizations, even if the groups adhere to all the public health guidelines required of the other services.

Keep in mind that the Church and its congregants just want to be treated equally. They don't seek to insulate themselves from the Commonwealth's general public health guidelines. They simply wish to incorporate them into their worship services. They are willing to practice social distancing. They are willing to follow any hygiene requirements. They do not ask to share a chalice. The Governor has offered no good reason for refusing to trust the congregants who promise to use care in worship in just the same way it trusts accountants, lawyers, and laundromat workers to do the same.

Come to think of it, aren't the two groups of people often the *same people*—going to work on one day and going to worship on another? How can the same person be trusted to comply with social-distancing and other health guidelines in secular settings but not be trusted to do the same in religious settings? The distinction defies explanation, or at least the Governor has not provided one.

Roberts v. Neace, No. 20-5465, 2020 U.S. App. LEXIS 14933, at *8-9 (6th Cir. May 9, 2020) (emphasis in original).

Because the Kentucky governor failed to explain to the Court why his executive order allowed secular activities, but not religious activities, to gather, the Sixth Circuit concluded that "the unexplained breadth of the ban on religious services, together with its haven for numerous secular exceptions, cannot co-exist with a society that places religious freedom in a place of honor in the Bill of Rights: the First Amendment." *Roberts v. Neace*, No. 20-5465, 2020 U.S. App. LEXIS 14933, at *15-16 (6th Cir. May 9, 2020). The Court therefore enjoined Commonwealth officials from enforcing orders prohibiting gatherings for in-person religious worship which adhere to the COVID-19 public health requirements. *Id.* at 16. Although the Sixth Circuit decision is not precedential in this First Circuit, we believe the First Circuit would take this decision as instructive.



A federal court in North Carolina just granted a Temporary Restraining Order in the case of *Berean Baptist Church, et. al. v. Governor Roy A. Cooper* restricting the Governor's order limiting the free exercise of religion by churches state-wide.

Plaintiffs have demonstrated that they are likely to succeed on the merits because the assembly for religious worship provisions in BO 138 and the Guidance place a burden on the plaintiff's free exercise of religion. See, ~ Roberts, 2020 WL2316679, at *2-5. Plaintiffs "just want to be treated equally." Id. at *3. "They don't seek to insulate themselves from [North Carolina's] general public health guidelines." Id. "They simply wish to incorporate them into their worship services" indoors. Id. "They are willing to follow any hygiene requirements." Id. "The Governor has offered no good reason for refusing to trust the congregants who promise to use care in worship in just the same way he trusts accountants, lawyers, and laundromat workers to do the same." Id. "How can the same person be trusted to comply with social-distancing and other health guidelines in secular settings but not be trusted to do the same in religious settings?"

In the last couple weeks, Pastor Clark has conducted several Zoom meetings for hundreds of pastors in the Northeast, including many in New Jersey. While he is encouraging pastors to be engaged in supporting our national and state leadership in combatting the virus, the overwhelming concern on their part is the need to get back to worship and assembling in a strategic and safe manner to offer the comfort, hope and compassion for neighbors that can come only from a personal knowledge of Jesus Christ. Solid Rock and other churches need the comfort of "Not forsaking the assembling of ourselves together, as the manner of some is, but exhorting one another: and so much the more, as ye see the day approaching." (Hebrews 10:25).

Attorney General Barr has again issued guidance concerning balancing public safety with the preservation of civil rights. This memorandum issued April 27, 2020 stated:

As the Department of Justice explained recently in guidance to states and localities taking steps to battle the pandemic, even in times of emergency, when reasonable and temporary restrictions are placed on rights, the First Amendment and federal statutory law prohibit discrimination against religious institutions and religious believers. The legal restrictions on state and local authority are not limited to discrimination against religious institutions and religious believers. For example, the Constitution also forbids, in certain circumstances, discrimination against disfavored speech and undue interference with the national economy. If a state or local ordinance crosses the line from an appropriate exercise of authority to stop the spread of COVID-19 into an overbearing infringement of constitutional and statutory protections, the Department of Justice may have an obligation to address that overreach in federal court.



Governor Phil Murphy

May 18, 2020

Page 4 of 5

I am therefore directing the Assistant Attorney General for Civil Rights, Eric Dreiband, and Matthew Schneider, the U.S. Attorney for the Eastern District of Michigan, to oversee and coordinate our efforts to monitor state and local policies and, if necessary, take action to correct them. They should work not only with all Department of Justice offices and other federal agencies, but with state and local officials as well.

Many policies that would be unthinkable in regular times have become commonplace in recent weeks, and we do not want to unduly interfere with the important efforts of state and local officials to protect the public. But the Constitution is not suspended in times of crisis. We must therefore be vigilant to ensure its protections are preserved, at the same time that the public is protected.¹

Attorney General Barr has made it clear that there is a balance between protecting community and infringing on Constitutionally protected rights. This seems out of balance in New Jersey.

In furtherance of AG Barr's April 27, 2020 Initiative, the Department of Justice filed a Statement of Interest in a case brought by a church in Virginia against Governor Northam for preventing in-person meetings. In this brief, the DOJ argued three important points:²

1. Constitutional Rights Are Preserved During a Public Health Crisis

The Constitution allows government to take necessary, temporary measures to meet a genuine emergency. However, there is no pandemic exception to the Constitution and its Bill of Rights. The Constitution and its Bill of Rights must be upheld and preserved.

2. The Free Exercise Clause Prohibits Unequal Treatment of Religious Individuals and Organizations

The Free Exercise Clause guarantees to all Americans the "right to believe and profess whatever religious doctrine they desire." Prohibiting church services or other religious

¹ See "Attorney General William P. Barr Memorandum for the Assistant Attorney General for Civil Rights and All United States Attorneys concerning Balancing Public Safety with the Preservation of Civil Rights," available at: <https://www.justice.gov/opa/page/file/1271456/download> (last accessed April 28, 2020).

² See "The Department of Justice Files Statement of Interest in Support of Church That Ministers to Underserved Communities" available at: <https://www.justice.gov/opa/pr/department-justice-files-statement-interest-support-church-ministers-underserved-communities> (last accessed May 13, 2020) and See "The United States' Statement of Interest in Support of Plaintiff's Motion for an Injunction Pending Appeal" available at: <https://www.justice.gov/opa/press-release/file/1273211/download> (last accessed May 13, 2020).



Governor Phil Murphy

May 18, 2020

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gatherings despite permitting various other gatherings does not appear to be generally applicable. Churches cannot be treated differently than other essential businesses.

3. The Compelling Interest / Least Restrictive Means Test Is a Searching Inquiry

A law burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny. This is a difficult standard for the Government to meet. Because a compelling interest must be evaluated in context rather than by reference to a broad general principle such as health or safety, and because the “least-restrictive-means standard is exceptionally demanding,” a court must engage in a searching inquiry.

We are asking that you would review these standards and reevaluate your position on churches being allowed to meet for in-person gatherings. We believe a review of the law and the circumstances surrounding churches in New Jersey will allow your executive order to change and come in compliance with the law.

It is our understanding that many churches in New Jersey are set to resume in-person worship services in the next several weeks. Solid Rock Baptist Church likewise will resume its services in the church buildings starting May 24, 2020. Accordingly, we request that you confirm in writing that churches in New Jersey can conduct in person meetings starting May 24, 2020.

Please reach out to our office with any questions or concerns you may have. We look forward to hearing from you immediately as our client needs to make important decisions for the weeks ahead.

Sincerely,

Gibbs & Associates Law Firm, LLC

David C. Gibbs, Jr.

Seth J. Kraus

Jonathan D. Gibbs

Admitted in Ohio

And

Reilly, McDevitt & Henrich, P.C.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

SOLID ROCK BAPTIST CHURCH, a New
Jersey not-for-profit corporation; **BIBLE
BAPTIST CHURCH OF CLEMENTON**, a
New Jersey not-for-profit corporation;
**ANDREW REESE; CHARLES CLARK,
JR.;** and **CHARLES CLARK III,**

Plaintiffs,

v.

PHILIP D. MURPHY, Governor of the State
of New Jersey, in his official capacity;
GURBIR S. GREWAL, Attorney General of
the State of New Jersey, in his official capacity;
and **PATRICK J. CALLAHAN**,
Superintendent of State Police and State
Director of Emergency Management, in his
official capacities; **JILL S. MAYER**, Camden

Civil No. 1:20-cv-6805-RMB-JS

AMENDED COMPLAINT

County Prosecutor for Clementon Borough New Jersey, in her official capacity; **THOMAS J. WEAVER**, Mayor of Clementon Borough New Jersey, in his official capacity; **CHARLES GROVER**, Chief of Clementon Borough Police Department, in his official capacity; **RICK MILLER**, Mayor of Berlin Borough New Jersey, in his official capacity; **MILLARD WILKINSON**, Chief of Berlin Borough Police Department, in his official capacity; **RICHARD A. DE MICHELE**, Prosecutor for Berlin Borough New Jersey, in his official capacity; **CHERYL R. HENDLER COHEN**, Prosecutor for Clementon Borough New Jersey, in her official capacity,

Defendants.

Plaintiffs Solid Rock Baptist Church and Charles Clark, Jr., and Charles Clark III, Co-Pastors of Solid Rock Baptist Church; Bible Baptist Church, a New Jersey nonprofit corporation, and Andrew Reese, Pastor of Bible Baptist Church; for their Amended Complaint for Declaratory and Injunctive Relief against Defendant Philip D. Murphy in his official capacity as New Jersey Governor; Gurbir S. Grewal in his official capacity as Attorney General of the State of New Jersey; Colonel Patrick J. Callahan in his official capacity as New Jersey State Director of Emergency Management and Superintendent of State Police; Jill S. Mayer, Camden County Prosecutor for Clementon Borough New Jersey, in her official capacity; Thomas J. Weaver, Mayor of Clementon Borough New Jersey, in his official capacity; Charles Grover, Chief of Clementon Borough Police Department, in his official capacity; Rick Miller, Mayor of Berlin Borough New Jersey, in his official capacity; Millard Wilkinson, Chief of Berlin Borough Police Department,

in his official capacity; Richard A. De Michele, Prosecutor for Berlin Borough New Jersey, in his official capacity; and Cheryl R. Hendler Cohen, Prosecutor for Clementon Borough New Jersey, in her official capacity, allege as follows:

INTRODUCTION

1. Plaintiffs bring this suit to challenge Executive Order No. 107 issued by New Jersey Governor Philip Murphy on March 21, 2020, as further clarified by Administrative Order No. 2020-4 issued by Defendant Patrick Callahan on March 21, 2020. The Executive Order’s virtual ban of religious assembly is unconstitutional on-its-face and as applied because it is not narrowly tailored and does not permit less restrictive means to achieve the government’s interest without burdening Plaintiffs’ rights protected by the U.S. Constitution.

2. The challenged EO 107 and AO 2020-4 prohibit Plaintiffs from gathering indoors for religious worship with more than ten (10) people, regardless of whether the Church Plaintiffs meet or exceed the social distancing and protective hygiene guidelines pursuant. Meanwhile, EO 107 disparately and discriminatorily allows so-called “essential” commercial and other secular entities (*e.g.*, liquor stores, licensed medical marijuana retailers, transportation carriers, grocery stores, hotels, professional offices, commercial retail stores that supply essential sectors) to accommodate gatherings of more than 10 people without scrutiny or numerical limits. *Tenafly Eruv Ass’n, Inc. v. Borough of Tenafly*, 309 F.3d 144, 165 (3d Cir. 2002) (“the Free Exercise Clause’s mandate of neutrality toward religion prohibits government from “deciding that secular motivations are more important than religious motivations.”)

3. Governor Murphy's Executive Orders, as clarified by Defendant Callahan's Administrative Order, has been interpreted, applied, and enforced by Defendants Attorney General Grewal and Colonel Callahan such that local police officers have visited the churches, installed cameras on church property for surveillance purposes, investigated the parking lot of one church, filed Complaints against the 3 pastors for allowing religious gatherings that exceed the 10-people limit, even though the gathered individuals were separated by six feet and wore masks unless hindered from doing so for health reasons, while occupying the sanctuary, meeting or exceeding the social distancing and personal hygiene recommendations for "Essential Services" still permitted to gather.

4. The Defendants' Orders are not neutral laws of general applicability because they target constitutionally protected activity, significantly burden the Plaintiffs' right to the freedom of religion and assembly, establish an orthodox form of religious exercise approved by the State of New Jersey, all the while providing broad exemptions for many secular activities that are not constitutionally protected, all without due process of law. *Tenafly*, 309 F.3d at 165 ("if the law is not neutral (*i.e.*, if it discriminates against religiously motivated conduct) or is not generally applicable (*i.e.*, if it proscribes particular conduct only or primarily when religiously motivated), strict scrutiny applies and the burden on religious conduct violates the Free Exercise Clause unless it is narrowly tailored to advance a compelling government interest.")

Laws of the State of New Jersey in 1976 and located in the City of Clementon, County of Camden, New Jersey. Hereinafter, every reference to Bible Baptist includes its members.

12. Plaintiff Andrew Reese serves as Pastor of Bible Baptist in Clementon, New Jersey, and has received multiple citations for holding religious worship services indoors with more than 10 people in violation of Defendant Gov. Murphy's executive orders at issue herein.

13. Plaintiff Solid Rock Baptist Church of West Berlin ("Solid Rock") is a non-profit church organized exclusively for religious purposes within the meaning of § 501(c)(3) of the Internal Revenue Code, the corporation formed in 1983, and located in the City of Berlin, County of Camden, New Jersey. Hereinafter, every reference to Solid Rock includes its members.

14. Plaintiff Charles Clark, Jr., serves as Co-Pastor of Solid Rock in Berlin, New Jersey, and has received multiple citations for holding religious worship services indoors with more than 10 people in violation of Defendant Gov. Murphy's executive orders at issue herein.

15. Plaintiff Charles Clark III serves as Co-Pastor of Solid Rock in Berlin, New Jersey, and has received multiple citations for holding religious worship services indoors with more than 10 people in violation of Defendant Gov. Murphy's executive orders at issue herein.

DEFENDANTS

16. Defendant Philip D. Murphy, in his official capacity as Governor of the State of New Jersey ("Governor Murphy"), is responsible for enacting and enforcing the

COVID-19 Executive Orders at issue in this litigation and is sued in his official capacity only.

17. Defendant Gurbir S. Grewal, in his official capacity as Attorney General for the State of New Jersey, is the chief law enforcement officer of the State of New Jersey, exercising, delegating, and supervising all the powers and duties of the New Jersey Department of Law and Public safety, including the enforcement of N.J.S.A. App. A:9-49 and 50, which impose criminal penalties for violation of the Executive Orders and under which all Pastor Plaintiffs have been charged.

18. Defendant Patrick J. Callahan, in his official capacity as the Superintendent of the New Jersey Division of State Police as well as the State Director of Emergency Management, is responsible for carrying out the enforcement of N.J.S.A. App. A:9-49, which imposes criminal penalties for violations of the Governor's Executive Orders, and for implementing the Governor's Executive Orders.

19. Defendant Jill S. Mayer, in her official capacity as the Camden County Prosecutor, is responsible for carrying out the enforcement of N.J.S.A. App. A:9-49, which imposes criminal penalties for violations of the Governor's Executive Orders, and for implementing the Governor's Executive Orders.

20. Defendant Thomas J. Weaver, in his official capacity as the Mayor of Clementon Borough, is responsible for carrying out the enforcement of N.J.S.A. App. A:9-49, which imposes criminal penalties for violations of the Governor's Executive Orders, and for implementing the Governor's Executive Orders.

27. Each defendant possessed final decision-making authority and issued official proclamations, policy and edicts which led to Plaintiffs' harm.

28. Each defendant was responsible for the implementation and enforcement of EO 107 and AO 2020-4.

STATEMENT OF FACTS

The Governor's Executive Orders

28. On March 9, 2020, Defendant Governor Murphy issued Executive Order No. 103 ("EO 103), declaring a State of Emergency and a Public Health Emergency pursuant to N.J.S.A. 26:13-1 *et seq.*, N.J.S.A. App. A:9-33 *et seq.*, N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 based upon the public health emergency posed by the COVID-19 pandemic the world is currently undergoing. *See* EO 103, attached as **Exhibit 1**. The Governor's State of Emergency proclamation is still in effect.

29. In EO 103 Governor Murphy also authorized and empowered the State Director of Emergency Management, Colonel Patrick Callahan, who is the Superintendent of the State Police, in conjunction with the Commission of DOH, to "take any such emergency measures as the State Director may determine necessary" to protect New Jersey citizens from possible COVID-19 exposure.

30. On March 16, Defendant Gov. Murphy issued Executive Order 104 ("EO 104") prohibiting gatherings of more than 50 people, excluding "normal operations at airports, bus and train stations, medical facilities, office environments, factories, assemblages for the purpose of industrial or manufacturing work, construction sites, mass transit, or the purchase of groceries or consumer goods." EO 104 authorized the

imposition of criminal penalties of fines up to \$1,000 and imprisonment for up to six months for violation of its terms. *See* EO 104 attached as **Exhibit 2**.

31. On March 21, 2020, Gov. Murphy issued Executive Order No. 107 (“EO 107”) prohibiting all “[g]atherings of individuals, such as parties, celebrations, or other social events” “unless authorized by any part of this Order.” Excluded from the gathering prohibition were 15 categories of businesses, including grocery stores, medical supply stores, convenience stores, home improvement stores, pet stores, liquor stores, etc. EO 107 authorized the imposition of criminal penalties of fines up to \$1,000 and imprisonment for up to six months for violation of its terms. *See* EO 107 attached as **Exhibit 3**.

32. On March 21, 2020, Colonel Callahan issued Administrative Order No. 2020-4 (“AO 2020-4”) to clarify “that gatherings of 10 persons or fewer are presumed to be in compliance with the terms and intentions of the Executive Order [No. 107], unless clear evidence exists to the contrary.” *See* AO 2020-4 attached as **Exhibit 4**.

33. On April 7, and on May 6, 2020, Gov. Murphy issued Executive Orders No. 119 and 138 declaring that the Public Health Emergency he declared in EO 103 continued to exist, and ordering that his Executive Orders issued pursuant to the Public Health Emergency remained in full force for an additional 30 days each.

34. On May 13, 2020, Governor Murphy issued Executive Order No. 142 (“EO 142”) permitting indoor gatherings of no more than 10 people, such limitation imposed without any reference by EO 142 to the capacity of the space available for the gathering

that would allow for social distancing by the gathering participants. *See* EO 142 attached as **Exhibit 5**.

35. On May 22, 2020, Governor Murphy issued Executive Order 148 (“EO 148”) permitting gatherings of no more than 25 people outdoors with participants practicing social distancing and wearing face coverings, but continuing to prohibit indoor gatherings of more than 10 people, even if those gathering indoors practice the recommended social distancing and protective hygiene protocols. *See* EO 148 attached as **Exhibit 6**.

36. The Governor’s prohibition against Plaintiffs gathering for religious worship with more than 10 people continues to be in effect.

37. On May 22, 2020, President Donald J. Trump announced that new Centers for Disease Control guidance will classify houses of worship as “essential,” and called on governors to allow them to open “right now.”

Bible Baptist Church

38. Plaintiff Bible Baptist Church has been operating in Clementon since 1886 and officially incorporated as a New Jersey nonprofit corporation in 1976.

39. Multiple times almost every week since that date, for 134 years, Bible Baptist has assembled its members and attendees to engage in religious worship as a church in Clementon.

40. Bible Baptist has been pastored by Plaintiff Andrew Reese since 2014.

41. The Church and its members and congregants, including Pastor Reese, who together make up the Church, believe that a physical assembly in one place on the Lord’s

day, for mid-week services, revivals, other special religious worship meetings, and for Christian fellowship is an essential part of their worship and that failure to assemble is a sin in violation of God's commands as they interpret the *Holy Bible* in such verses as Hebrews 10:25, Romans 10:17, Acts 2:42, I Corinthians 12:25-26, Luke 14:23 and Ephesians 5:25-26.

42. Church attendance is of such ecclesiastical importance to Bible Baptist that under the church's bylaws, the failure of a member to attend at least one regular worship service in six months subjects that member's membership to automatic termination.

43. The Church has terminated the membership of several individuals for nonattendance since Pastor Reese has been pastor.

44. The Church is a small congregation, normally having 70 people at its weekly worship assembly.

45. From March 23, 2020, until May 20, 2020, Bible Baptist operated in compliance with EO 107 by not having indoor worship services, instead livestreaming Pastor Reese's sermons, being assured that the limitations on Bible Baptist's right to assemble in compliance with its faith would be temporary.

46. Then, on May 20, 2020, Bible Baptist held its mid-week worship service in its building with more than 10 people in the sanctuary. Every individual attending, other than families, sat at least 6 feet apart and wore a mask.

47. On Tuesday, May 19, 2020, church members spent most of the day cleaning and sanitizing the church sanctuary in preparation for the mid-week worship service.

48. On May 21, 2020, Chief Charles Grover, Clementon Police Department swore out Complaint # 0410-SC-006154, charging Pastor Reese with violation of APP. A:9-50 for “opening Bible Baptist Church on May 20, 2020 and facilitating a gathering of more than 10 people on the premises of the Church in violation of Executive Order 107 in violation of APP. A:9-50” and summoning him to appear before the Clementon Borough Municipal Court on June 16, 2020.

49. On Sunday, May 24, 2020, Bible Baptist held two Sunday religious worship service indoors with more than 10 people in the sanctuary. The sanctuary was sanitized before each worship service. Every individual attending, other than families, sat at least 6 feet apart and wore a mask.

50. Clementon police officers showed up for less than half an hour for both services and then, on May 24, 2020, Chief Charles Grover of Clementon Police Department swore out Complaint # 0410-SC-00006150 charging Pastor Reese with violating APP. A:9-50 for “opening Bible Baptist Church on May 20, 2020 and facilitating a gathering of more than 10 people on the premises of the Church in violation of Executive Order 107 in violation of APP. A:9-50” and summoning him to appear before the Clementon Borough Municipal Court.

51. On or before September 15, 2020, Defendant Meyer instructed Defendants Weaver, Grover, and Cohen not to entertain plea negotiations with Pastor Reese regarding the prosecution of said complaints in Clementon Municipal Court.

52. Bible Baptist’s sanctuary has a seating capacity of 75, and for the gatherings already held during the pandemic, at no time was the sanctuary filled to

capacity, but instead, the church only allowed a maximum of 38 people in the sanctuary so as to comply with social distancing requirements.

53. Despite the threat of criminal prosecution, his faith compels Pastor Reese and Bible Baptist members to continue to assemble as commanded by the Lord in His Word, the *Holy Bible*.

54. Pastor Reese and Bible Baptist congregants are concerned that Pastor Reese and the congregants will be charged and sentenced to the payment of fines and to imprisonment when they continue to gather for religious worship indoors with more than 10 people.

55. Pastor Reese and Bible Baptist have been complying and are willing to continue to comply with Center for Disease Control social distancing and protective hygiene requirements for the protection of the gathering participants and to stop the spread of COVID-19.

Solid Rock Baptist Church

56. Plaintiff Solid Rock Baptist Church of West Berlin has been operating in West Berlin, New Jersey since 1981 and officially incorporated as a New Jersey nonprofit corporation in 1983.

57. Multiple times almost every week since that date, for 39 years, Solid Rock has gathered its members and attendees to engage in religious worship as a church in Berlin, New Jersey.

58. Solid Rock has been pastored by Plaintiff Charles Clark, Jr., since 1981.

59. Solid Rock is co-pastored by Plaintiff Charles Clark III.

60. Solid Rock and its members and congregants, including Pastor Clark, Jr., and Pastor Clark III, who together make up the Church, believe that a physical assembly in one place on the Lord's day, for mid-week services, revivals, and other special religious worship meetings is an essential part of their worship and that failure to assemble is a sin in violation of God's commands as they interpret the *Holy Bible* in such verses as Hebrews 10:25, Romans 10:17, Acts 2:42, I Corinthians 12:25-26, Luke 14:23 and Ephesians 5:25-26.

61. Church attendance is of such ecclesiastical importance that under the church's bylaws, the failure of a member to attend at least one regular worship service in four months subjects that member's membership to automatic termination.

62. Solid Rock has terminated the membership of several individuals for nonattendance since Pastor Clark has been pastor.

63. Solid Rock is a large congregation, with its sanctuary able to seat up to 1000 people.

64. From March 23, 2020, until May 24, 2020, Solid Rock operated in compliance with EO 107 by not having indoor worship services, instead livestreaming Pastor Clark's sermons, being assured that the limitations on Solid Rock's right to assemble in compliance with its faith would be temporary.

65. By a letter to Governor Murphy dated May 15, 2020, Pastor Clark gave notice to Defendant Murphy that "We will be safe, sanitized, and using social distancing. Solid Rock will begin having services in our building on May 24, 2020," and asking that

the Governor declare churches to be “essential” with the attendant freedoms allowed those secular businesses, services, and workers. (Attached as **Exhibit 7**).

66 By letter to Governor Murphy dated May 18, 2020, counsel for Solid Rock explained their constitutional concerns with his executive orders prohibiting churches from gathering with more than 10 people indoors, gave the Governor notice that Solid Rock would be opening for services May 24, 2020, and asked that his office confirm in writing that churches in New Jersey could begin meeting again. (Attached as **Exhibit 8**).

67. After no response to either letter from Defendant Murphy, on Sunday, May 24, 2020, Solid Rock held two religious worship services indoors with more than 10 people in the sanctuary. Solid Rock permitted no more than 250 people in the sanctuary so as to comply with social distancing requirements. Every person had his temperature checked with a touchless thermometer before he could enter and those with a temperature of 100.4° and above were not permitted to attend. Every individual attending, other than families, sat at least 6-feet apart and wore a mask. In preparation for the Sunday gatherings, church members spent much of the day before sanitizing the sanctuary. Members were required to make reservations to attend the Sunday services so as to enable the church to enforce its social distancing protocols.

68. The day before the services, Camden County public safety officers installed cameras at Solid Rock in order to surveille supporters and protesters that gathered outside the church during the worship services.

69. Berlin police officers did not disrupt the services, but on May 25, 2020, Lt. Michael Scheer of the Berlin Borough Police Department swore out 2 Complaints

charging Pastor Clark, Jr., with “opening Solid Rock Church [*sic.*] on 5/24/20 @ 10 am [and 5:30 pm] facilitating a gathering over 10 people in violation of EO 107. In violation of APP. A:9-50” and summoning him to appear before the Berlin Borough Municipal Court on July 6, 2020.

70. Berlin police officers did not disrupt the services, but on May 25, 2020, Lt. Michael Scheer of the Berlin Borough Police Department swore out a Complaint charging Pastor Clark III with “opening Solid Rock Church [*sic.*] on 5/24/20 @ 10 am [and 5:30 pm] facilitating a gathering over 10 people in violation of EO 107. In violation of APP. A:9-50.” and summoning him to appear before the Berlin Borough Municipal Court on July 6, 2020.

71. On or before September 14, 2020, Defendant Meyer instructed Defendants Miller, Wilkinson, and de Michelle not to entertain plea negotiations with Pastors Clark, Jr., and Clark III regarding the prosecution of said complaints in Clementon Municipal Court.

72. Despite the threat of criminal prosecution, his and their faith compel(s) Co-Pastors Clark, Jr., and Clark III, and Solid Rock members to continue to assemble as commanded by the Lord in His Word, the *Holy Bible*.

73. Pastors Clark, Jr., and Clark III, and Solid Rock congregants are concerned that Pastors Clark, Jr., and Clark III, and congregants will be charged and sentenced to the payment of fines and to imprisonment when they continue to gather for religious worship indoors with more than 10 people.

74. Co-Pastors Clark, Jr., and Clark III, and Solid Rock have been complying and are willing to continue to comply with Center for Disease Control social distancing and protective hygiene requirements for the protection of the gathering participants and to stop the spread of COVID-19.

COUNT ONE
(U.S. Const., First and Fourteenth Amendment – Free Exercise)

75. Plaintiffs hereby allege and incorporate by reference each and every allegation contained in paragraph 1 through 74 of this Amended Complaint as though fully set forth herein.

76. The First Amendment of the United States Constitution provides that “Congress shall make no law... prohibiting the free exercise [of religion].” Under the Fourteenth Amendment, this prohibits every level of state and local government from making a law prohibiting the free exercise of religion.

77. On their face or as applied, the Orders violate the First Amendment because they:

- a. constitute an overbroad restriction on the Plaintiffs’ rights to assemble to exercise their religious belief that they must worship together as a religious body as commanded by Scripture;
- b. place more stringent restrictions on the Church than are placed on secular businesses such as liquor stores, home improvement stores, and transportation carriers;

- c. allow a large number of secular gatherings of more than 10 people, such as in liquor stores, home improvement stores, and transportation carriers, while prohibiting religious gatherings of more than 10 people; and
- d. are not narrowly tailored, and are not the least restrictive means to accomplish a compelling governmental interest.

78. On their face or as applied the Orders exempt from the gatherings ban a large number of secular businesses and activities that are not protected by the Constitution, while not providing a sufficiently equivalent exemption for Plaintiffs' First Amendment-protected activity.

79. On their face or as applied, the Orders impose a substantial burden upon Plaintiffs' free exercise of religion, subjecting them to fines and possible imprisonment for exercising their religious belief that they commanded by God to gather together for religious worship in the building provided by God and long-dedicated to religious worship.

80. On its face or as applied, the Orders are not neutral, purporting to treat religious activity differently and less favorably than other categories of activity, including gatherings as defined by the Orders.

81. On their face or as applied the Orders are not generally applicable, prohibiting the churches' congregants from gathering for religious services while allowing gatherings for substantially similar secular conduct.

COUNT TWO

(U.S. Const., First and Fourteenth Amendment – Establishment of Religion)

82. Plaintiffs hereby allege and incorporate by reference each and every allegation contained in paragraph 1 through 81 of this Amended Complaint as though fully set forth herein.

83. The prohibition by the Orders of more than 10 people in a faith-based gathering purports to establish religion by dictating under penalties of criminal sanctions that Bible Baptist and Solid Rock may only worship together indoors in groups of 10 or fewer people, outdoors in groups of 25 or fewer people, or worship online, thereby establishing a state-approved orthodoxy for religious worship.

84. On their face or as applied, the Orders:

- a. permit the State to display impermissible hostility towards the churches' gatherings that they do not display to other, secular gatherings;
- b. show impermissible favoritism towards secular gatherings over the churches' religious gatherings;
- c. excessively entangle the State of New Jersey with the manner, style, form, practices, or sacraments of Plaintiffs' religious worship; and
- d. establish an acceptable method for the Plaintiffs' religious exercise and worship, placing a numerical limitation on the scope of how the Plaintiffs' religious exercise and worship may occur, and approving only State-approved forms of worship;

COUNT THREE

97. The equal protection clause is “essentially a direction that all persons similarly situated should be treated alike.” *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439, 105 S.Ct. 3249, 3254, 87 L.Ed.2d 313 (1985). Defendants treat Plaintiffs differently than other people and groups within the community because they subject Plaintiffs to criminal penalties for adhering to their firmly held religious beliefs and exercising of protected rights regardless of whether enforcing EO 107 would violate their religious charters, beliefs, and practices protected by the First Amendment of The United States Constitution.

98. The actions of Defendants in enforcing EO 107 have subjected Plaintiffs to unequal treatment relative to similarly situated non-religious groups and individuals who also exercised First Amendment rights guaranteed under The United States Constitution.

99. Through the actions of Defendants in enforcing EO 107 Defendants have infringed upon and continue to infringe upon Plaintiffs’ rights to equal protection under the law as secured by the Fourteenth Amendment of The United States Constitution.

COUNT SIX
(Equal Protection New Jersey Constitution)

100. Plaintiffs hereby allege and incorporate by reference each and every allegation contained in paragraph 1 through 99 of this Amended Complaint as though fully set forth herein.

101. The equal protection clause is “essentially a direction that all persons similarly situated should be treated alike.” *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439, 105 S.Ct. 3249, 3254, 87 L.Ed.2d 313 (1985). Defendants treat

Plaintiffs differently than other people and groups within the community because they subject Plaintiffs to criminal penalties for adhering to their firmly held religious beliefs and exercising of protected rights regardless of whether enforcing EO 107 would violate their religious charters, beliefs, and practices protected by the First Amendment of The United States Constitution.

102. The actions of Defendants in enforcing EO 107 have subjected Plaintiffs to unequal treatment relative to similarly situated non-religious groups and individuals who also exercised First Amendment rights guaranteed under The United States Constitution.

103. Through the actions of Defendants in enforcing EO 107 Defendants have infringed upon and continue to infringe upon Plaintiffs' rights to equal protection under the law as secured by the Fourteenth Amendment of The United States Constitution.

WHEREFORE, Plaintiffs respectfully request the Court to enter judgment against Defendants as follows:

A. Granting the Plaintiffs a permanent injunction enjoining Defendants or their designees or agents from enforcing the challenged Orders under any "social distancing" requirements different from those governing "essential" businesses or services;

B. Granting the Plaintiffs a declaratory judgment and permanent injunction that the challenged Orders are unconstitutional, on their face and as applied to Plaintiffs;

C. An award of costs of this litigation, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988; and

D. Such further relief as the Court deems just and proper.

September 21, 2020

Respectfully submitted,

BIBLE BAPTIST CHURCH
SOLID ROCK BAPTIST CHURCH
PASTOR ANDREW REESE
PASTOR CHARLES CLARK, JR.
PASTOR CHARLES CLARK III

By their attorneys,

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of Plaintiff's Amended Complaint to be served by the Court's CM/ECF system this 21st day of September, 2020, upon the State Defendants' counsel of record:

Daniel M. Vannella
25 Market Street
Trenton, NJ 08625
Daniel.vannella@law.njoag.gov.

By: /s/ Brian Tome

EXHIBITS LIST

EXHIBIT NO.	DESCRIPTION
Exhibit 1	Executive Order No. 103
Exhibit 2	Executive Order No. 104
Exhibit 3	Executive Order No. 107
Exhibit 4	Administrative Order No. 2020-4
Exhibit 5	Executive Order 142
Exhibit 6	Executive Order 148
Exhibit 7	Clark Letter
Exhibit 8	Gibbs Letter

Exhibit “1”

Executive Order No. 103

EXECUTIVE ORDER NO. 103

WHEREAS, Coronavirus disease 2019 ("COVID-19") is a contagious, and at times fatal, respiratory disease caused by the SARS-CoV-2 virus; and

WHEREAS, COVID-19 is responsible for the 2019 novel coronavirus outbreak, which was first identified in Wuhan, the People's Republic of China in December 2019 and quickly spread to the Hubei Province and multiple other countries; and

WHEREAS, symptoms of the COVID-19 illness include fever, cough, and shortness of breath, which may appear in as few as two or as long as 14 days after exposure, and can spread from person to person via respiratory droplets produced when an infected person coughs or sneezes; and

WHEREAS, on January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak a "public health emergency of international concern," which means "an extraordinary event which is determined to constitute a public health risk to other States through the international spread of disease and to potentially require a coordinated international response," and thereafter raised its global risk assessment of COVID-19 from "high" to "very high"; and

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services Secretary declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19; and

WHEREAS, as of March 9, 2020, according to the Centers for Disease Control and Prevention ("CDC"), there were more than 114,000 confirmed cases of COVID-19 worldwide, with over 4,000 of those cases having resulted in death; and

WHEREAS, as of March 9, 2020, there were more than 500 confirmed cases of COVID-19 in the United States, with 22 of those cases having resulted in death; and

WHEREAS, as of March 9, 2020, there were 11 presumed positive cases of COVID-19 in New Jersey, with 24 additional "Persons Under Investigation" spread across the counties of Bergen, Camden, Cumberland, Essex, Hunterdon, Middlesex, Monmouth, Passaic, Union, and Sussex; and

WHEREAS, as of March 9, 2020, there were 142 positive cases of COVID-19 in the State of New York and seven presumptive positive cases in the Commonwealth of Pennsylvania; and

WHEREAS, the CDC expects that additional cases of COVID-19 will be identified in the coming days, including more cases in the United States, and that person-to-person spread is likely to continue to occur; and

WHEREAS, if COVID-19 spreads in New Jersey at a rate comparable to the rate of spread in other affected areas, it will greatly strain the resources and capabilities of county and municipal governments, including public health agencies, that provide essential services for containing and mitigating the spread of contagious diseases, such as COVID-19, and the situation may become too large in scope to be handled in its entirety by the normal county and municipal operating services in some parts of this State, and this situation may spread to other parts of the State; and

WHEREAS, the spread of COVID-19 may make it difficult or impossible for citizens to obtain consumer goods and other necessities of life due to supply chain disruption and price increases, as well as hamper the delivery of essential services such as police, fire, and first aid; and

WHEREAS, the State's public bidding act, N.J.S.A. 52:34-6 et seq., provides a public exigency exemption, N.J.S.A. 52:34-10(b), that in the event of a threat to the life, health, or safety to the public, advertised bidding is not required to obtain those

goods and services necessary to address the public exigency where the Division of Purchase of Property provides preapproval in accordance with Treasury Circular 18-14-DPP; and

WHEREAS, in the event of a declared emergency pursuant to Treasury Circular 19-10-DPP, the threshold for delegated purchasing by individual State Departments is raised to \$100,000 such that purchases at or below that amount do not require prior approval or action by DPP; and

WHEREAS, the spread of COVID-19 may disrupt the timely delivery of State contracted goods or services, the immediate delivery and fulfillment of which is necessary for the life, safety, or health of the public; and

WHEREAS, the State of New Jersey has been working closely with the CDC, local health departments, and healthcare facilities to monitor, plan for and mitigate the spread of COVID-19 within the State; and

WHEREAS, through Executive Order No. 102, which I signed on February 3, 2020, I created the State's Coronavirus Task Force, chaired by the Commissioner of the New Jersey Department of Health ("DOH"), in order to coordinate the State's efforts to appropriately prepare for and respond to the public health hazard posed by COVID-19; and

WHEREAS, it is critical to prepare for and respond to suspected or confirmed COVID-19 cases in New Jersey, to implement appropriate measures to mitigate the spread of COVID-19, and to prepare in the event of an increasing number of individuals requiring medical care or hospitalization; and

WHEREAS, the State of New Jersey also acts as an employer with tens of thousands of employees, and the spread of COVID-19 requires preparedness for staffing shortages and flexibility in work rules to ensure that its employees can fully comply with all

medically appropriate measures while also ensuring the continuous delivery of State services performed by Executive branch agencies; and

WHEREAS, the continuous delivery of services at the county and municipal level performed by those governments and their employees is also essential; and

WHEREAS, the spread of COVID-19 within New Jersey constitutes an imminent public health hazard that threatens and presently endangers the health, safety, and welfare of the residents of one or more municipalities or counties of the State; and

WHEREAS, it is necessary and appropriate to take action against this public health hazard to protect and maintain the health, safety, and welfare of New Jersey residents and visitors; and

WHEREAS, the facts as set forth above and consultation with the Commissioner of DOH confirms that there exists a public health emergency in the State; and

WHEREAS, New Jersey's Consumer Fraud Act, N.J.S.A. 56:8-107 et seq., prohibits excessive price increases during a declared state of emergency, or for 30 days after the termination of the state of emergency; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, in order to protect the health, safety and welfare of the people of the State of New Jersey, DO DECLARE and PROCLAIM that a Public Health Emergency and State of Emergency exist in the State of New Jersey, and I hereby ORDER and DIRECT the following:

1. I authorize and empower the State Director of Emergency Management, who is the Superintendent of State Police, in conjunction with the Commissioner of DOH, to take any such emergency measures as the State Director may determine necessary, including the implementation of the State Emergency Operations Plan and directing the activation of county and municipal emergency operations plans, in order to fully and adequately protect the health, safety and welfare of the citizens of the State of New Jersey from any actual or potential threat or danger that may exist from the possible exposure to COVID-19. The State Director of Emergency Management, in conjunction with the Commissioner of DOH, is authorized to coordinate the relief effort from this emergency with all governmental agencies, volunteer organizations, and the private sector.

2. The State Director of Emergency Management, in conjunction with the Commissioner of DOH, shall also supervise and coordinate all activities of all State, regional and local political bodies and agencies in order to ensure the most effective and expeditious implementation of this order, and, to this end, may call upon all such agencies and political subdivisions for any assistance necessary.

3. Given the concurrent invocation of both a State of Emergency pursuant to N.J.S.A. App.A.:9-33 et seq. and a Public Health Emergency as contemplated by N.J.S.A. 26:13-1 et seq., I reserve the right as specifically contemplated by N.J.S.A. 26:13-3 to exercise the authority and powers specific to the Emergency Health Powers Act as I deem necessary and appropriate to ensure the public health for New Jersey's residents.

4. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every

political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully with the State Director of Emergency Management and the Commissioner of DOH in all matters concerning this state of emergency.

5. The Coronavirus Task Force established under Executive Order No. 102 is continued with the Commissioner of DOH as the chair, and shall provide assistance on the State's efforts preparing for and responding to the public health hazard posed by COVID-19.

6. I authorize and empower the executive head of any agency or instrumentality of the State government with authority to promulgate rules to waive, suspend, or modify any existing rule, where the enforcement of which would be detrimental to the public welfare during this emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary for the duration of this Executive Order, subject to my prior approval and in consultation with the State Director of Emergency Management and the Commissioner of DOH. Any such waiver, modification, or suspension shall be promulgated in accordance with N.J.S.A. App. A:9-45.

7. All State agencies, and specifically the Departments of Banking and Insurance, Health, Human Services, Education, and the Civil Service Commission are authorized to take appropriate steps to address the public health hazard of COVID-19, including increasing access and eliminating barriers to medical care, protecting the health and well-being of students, and protecting the health and well-being of State, county, and municipal employees while ensuring the continuous delivery of State, county, and municipal services.

8. I authorize and empower the State Director of Emergency Management, in conjunction with the Commissioner of DOH, to order the evacuation of all persons, except for those emergency and governmental personnel whose presence the State Director deems necessary, from any area where their continued presence would present a danger to their health, safety, or welfare because of the conditions created by this emergency.

9. I authorize and empower the State Director of Emergency Management, in conjunction with the Commissioner of DOH, to utilize all property, equipment, and facilities owned, rented, operated, and maintained by the State of New Jersey to house and shelter persons who may need to be evacuated from a residence, dwelling, building, structure, or vehicle during the course of this emergency.

10. I authorize and empower the Adjutant General, in accordance with N.J.S.A. 38A:2-4 and N.J.S.A. 38A:3-6.1, to order to active duty such members of the New Jersey National Guard who, in the Adjutant General's judgment, are necessary to provide aid to those localities where there is a threat or danger to the public health, safety, and welfare and to authorize the employment of any supporting vehicles, equipment, communications, or supplies as may be necessary to support the members so ordered.

11. In accordance with the N.J.S.A. App. A:9-34 and N.J.S.A. App. A:9-51, I reserve the right to utilize and employ all available resources of the State government and of each and every political subdivision of the State, whether of persons, properties, or instrumentalities, and to commandeer and utilize any personal services and any privately-owned property necessary to protect against this emergency.

12. In accordance with N.J.S.A. App. A:9-40, no municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of this Order, or which will in any way interfere with or impede the achievement of the purposes of this Order.

13. In accordance with N.J.S.A. App. A:9-34, N.J.S.A. App. A:9-40.6, and N.J.S.A. 40A:14-156.4, no municipality or public or semipublic agency shall send public works, fire, police, emergency medical, or other personnel or equipment into any non-contiguous impacted municipality within this State, nor to any impacted municipality outside this State, unless and until such aid has been directed by the county emergency management coordinator or his or her deputies in consultation with the State Director of Emergency Management in conjunction with the Commissioner of DOH.

14. This Order shall take effect immediately and shall remain in effect until such time as it is determined by me that an emergency no longer exists.

GIVEN, under my hand and seal this
9th day of March,
Two Thousand and Twenty, and
of the Independence of the
United States, the Two
Hundred and Forty-Fourth.

[seal]

/s/ Philip D. Murphy
Governor

Attest:

/s/ Matthew J. Platkin
Chief Counsel to the Governor

WHEREAS, the President of the United States also determined on March 13, 2020, that the COVID-19 pandemic was of sufficient severity and magnitude to warrant an emergency determination under Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207; and

WHEREAS, as of March 16, 2020, according to the Centers for Disease Control and Prevention ("CDC"), there were more than 130,000 confirmed cases of COVID-19 worldwide, with over 6,500 of those cases having resulted in death; and

WHEREAS, as of March 16, 2020, there were more than 4,900 confirmed cases of COVID-19 in the United States, with 67 of those cases having resulted in death; and

WHEREAS, as of March 16, 2020, there were 178 positive cases of COVID-19 in New Jersey, spread across numerous counties; and

WHEREAS, social mitigation strategies for combatting COVID-19 requires every effort to reduce the rate of community spread of the disease; and

WHEREAS, as of March 15, 2020, the CDC recommends that for the next eight weeks, gatherings of 50 or more people be canceled or postponed throughout the United States; and

WHEREAS, public and private preschool programs, elementary and secondary schools, and institutions of higher education are locations where significant numbers of students, educators, and support staff gather, often in close proximity in classrooms, hallways, cafeterias, and gymnasiums; and

WHEREAS, suspending in-person preschool programs, K-12 education, and in-person instruction at institutions of higher education are part of the State's mitigation strategy to combat COVID-19 and reduce the rate of community spread; and

WHEREAS, my Administration is committed to ensuring that all students will continue to have access to a quality education, in addition to school meals that are provided or subsidized for students from low-income families; and

WHEREAS, casinos, racetracks, gyms, fitness centers, movie theaters, performing arts centers, other concert venues, nightclubs, and other entertainment centers, which are vital to the economic health of the State, are also locations where large numbers of individuals gather in close proximity; and

WHEREAS, many individuals also come into contact with common surfaces at gyms, fitness centers, and other entertainment centers; and

WHEREAS, suspending operations at these businesses is part of the State's mitigation strategy to combat COVID-19 and reduce the rate of community spread; and

WHEREAS, even on casino floors, where slot machines or other casino games may be several feet apart, many individuals come into contact with common surfaces; and

WHEREAS, in contrast to gaming at brick-and-mortar facilities, online gaming provides a safe mode of entertainment during a time when physical proximity to other individuals can be dangerous; and

WHEREAS, the CDC has advised that COVID-19 spreads most frequently through person-to-person contact when individuals are within six feet or less of one another; and

WHEREAS, as a result, the CDC has recommended that individuals practice "social distancing" to prevent community spread of the virus; and

WHEREAS, the CDC has defined social distancing as the practice of "remaining out of congregate settings, avoiding mass gatherings, and maintaining distance (approximately 6 feet or 2 meters) from others when possible"; and

WHEREAS, bars and restaurants are locations where significant numbers of individuals gather in close proximity, making adherence to social distancing protocols impossible or impracticable; and

WHEREAS, to mitigate community spread of COVID-19, it is necessary to limit the unnecessary movement of individuals in and around their communities and person-to-person interactions in accordance with CDC and DOH guidance; and

WHEREAS, on March 15, 2020, the Director of the National Institute of Allergy and Infectious Diseases, Dr. Anthony Fauci, called for "a dramatic diminution of the personal interaction that we see in restaurants and in bars," and recommended pursuing "[w]hatever it takes to do that"; and

WHEREAS, the provision of take-out and delivery services do not pose the same danger of widespread person-to-person contact while still preserving necessary food delivery services for New Jersey residents; and

WHEREAS, narrowing scope of service or hours of operation for restaurants and certain retail establishments permits individuals to access food, clothing, and other essential materials while also limiting unnecessary person-to-person contact; and

WHEREAS, it is critical to ensure that law enforcement resources, particularly those that might otherwise be required to respond to late-night incidents, not be unnecessarily diverted from responding to COVID-19 related issues and maintaining public safety; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. All gatherings of persons in the State of New Jersey shall be limited to 50 persons or fewer, excluding normal operations at airports, bus and train stations, medical facilities, office environments, factories, assemblages for the purpose of industrial or manufacturing work, construction sites, mass transit, or the purchase of groceries or consumer goods.

2. All public, private, and parochial preschool program premises, and elementary and secondary schools, including charter and renaissance schools, shall be closed to students beginning on Wednesday, March 18, 2020, and shall remain closed as long as this Order remains in effect.

3. All institutions of higher education shall cease in-person instruction beginning on Wednesday, March 18, 2020, and shall cease such in-person instruction as long as this Order remains in effect. The Secretary of the Office of Higher Education shall have the authority to grant a waiver to allow in-person instruction to students on a case-by-case basis where a compelling rationale to allow such access exists. The Secretary of the Office of Higher Education shall coordinate with institutions of higher education to determine appropriate student housing conditions for those students who reside in on-campus housing as their primary residence.

4. The Commissioner of the Department of Education ("DOE"), in consultation with the Commissioner of DOH, shall be authorized to permit schools to remain open on a limited basis for the provision of food or other essential, non-educational services, or for educational or child care services if needed in emergency situations after consultation with the Commissioner of DOH. The Commissioner of DOE shall also have the authority to close any other career or

training facilities over which he has oversight, after consultation with the Commissioner of DOH.

5. The Commissioner of DOE shall continue working with each public school district, and private and parochial schools as appropriate, to ensure that students are able to continue their educations during this time period through appropriate home instruction. Local school districts, charter schools, and renaissance schools, in consultation with the Commissioner of DOE, shall have the authority and discretion to determine home instruction arrangements as appropriate on a case-by-case basis to ensure all students are provided with appropriate home instruction, taking into account all relevant constitutional and statutory obligations.

6. The Secretary of the Department of Agriculture, in conjunction with the Commissioner of DOE, shall take all necessary actions to ensure that all students eligible for free or reduced meals shall continue to receive the services or supports necessary to meet nutritional needs during closures.

7. The following facilities are ordered closed to members of the public, effective 8:00 p.m. on Monday, March 16, 2020. These facilities are to remain closed to the public for as long as this Order remains in effect. The State Director of Emergency Management, who is the Superintendent of State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to this list:

- a. Casino gaming floors, including retail sports wagering lounges, and casino concert and entertainment venues. Online and mobile sports and casino gaming services may continue to be offered notwithstanding the closure of the physical facility.
- b. Racetracks, including stabling facilities and retail sports wagering lounges. Mobile sports wagering

services may continue to be offered notwithstanding the closure of the physical facility.

c. Gyms and fitness centers and classes.

d. Entertainment centers, including but not limited to, movie theaters, performing arts centers, other concert venues, and nightclubs.

8. Other non-essential retail, recreational, and entertainment businesses must cease daily operations from 8:00 p.m. until 5:00 a.m.. From 5:00 a.m. until 8:00 p.m., these businesses may remain open if they limit their occupancy to no more than 50 persons and adhere to social distancing guidelines. Examples of essential businesses excluded from this directive include: grocery/food stores, pharmacies, medical supply stores, gas stations, healthcare facilities and ancillary stores within healthcare facilities. The State Director of Emergency Management, who is the Superintendent of State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to the list of essential businesses and to the timelines applicable to operating hours.

9. All restaurants, dining establishments, and food courts, with or without a liquor license, all bars, and all other holders of a liquor license with retail consumption privileges, are permitted to operate their normal business hours, but are limited to offering only food delivery and/or take-out services. If alcoholic beverages are to be sold from a restaurant, dining establishment or bar with a liquor license, such sales shall be limited to original containers sold from the principal public barroom. All retail sales of alcoholic beverages by limited brewery licensees, restricted brewery licensees, plenary and farm winery licensees (and associated salesrooms), craft distillery licensees and cidery and meadery licensees must be in original containers and must be delivered by licensed entities and/or by customer pick up.

10. In accordance with N.J.S.A. App. A:9-33, et seq., as supplemented and amended, the State Director of Emergency Management, who is the Superintendent of State Police, through the police agencies under his control, to determine and control the direction of the flow of vehicular traffic on any State or interstate highway, municipal or county road, and any access road, including the right to detour, reroute, or divert any or all traffic and to prevent ingress or egress from any area that, in the State Director's discretion, is deemed necessary for the protection of the health, safety, and welfare of the public, and to remove parked or abandoned vehicles from such roadways as conditions warrant.

11. The Attorney General, pursuant to the provisions of N.J.S.A. 39:4-213, shall act through the Superintendent of State Police, to determine and control the direction of the flow of vehicular traffic on any State or interstate highway, municipal or county road, and any access road, including the right to detour, reroute, or divert any or all traffic, to prevent ingress or egress, and to determine the type of vehicle or vehicles to be operated on such roadways. I further authorize all law enforcement officers to enforce any such order of the Attorney General or Superintendent of State Police within their respective municipalities.

12. No municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of this Executive Order, or which will in any way interfere with or impede its achievement.

13. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of any

nature whatsoever, to cooperate fully in all matters concerning this Executive Order.

14. Penalties for violations of this Executive Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50.

15. This Order shall take effect immediately and shall remain in effect until revoked or modified by the Governor, who shall consult with the Commissioner of DOH as appropriate.

GIVEN, under my hand and seal this
16th day of March,
Two Thousand and Twenty, and of
the Independence of the United
States, the Two Hundred and
Forty-Fourth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor

Exhibit “3”
Executive Order No. 107

EXECUTIVE ORDER NO. 107

WHEREAS, through Executive Order No. 102 (2020), which I signed on February 3, 2020, I created the State's Coronavirus Task Force, chaired by the Commissioner of the New Jersey Department of Health ("DOH"), in order to coordinate the State's efforts to appropriately prepare for and respond to the public health hazard posed by Coronavirus disease 2019 ("COVID-19"); and

WHEREAS, in light of the dangers posed by COVID-19, I issued Executive Order No. 103 (2020) on March 9, 2020, the facts and circumstances of which are adopted by reference herein, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, in accordance with N.J.S.A. App. A:9-34 and -51, I reserved the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, in accordance with N.J.S.A. App. A:9-40, I declared that, due to the State of Emergency, no municipality, county, or any agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of my Executive Orders, or which will in any way interfere with or impede their achievement; and

WHEREAS, to further protect the health, safety, and welfare of New Jersey residents by, among other things, reducing the rate of community spread of COVID-19, I issued Executive Order No. 104 (2020) on March 16, 2020, the facts and circumstances of which are also adopted by reference herein, which established statewide social mitigation strategies for combatting COVID-19; and

WHEREAS, Executive Order No. 104 (2020) limited the scope of service and hours of operation for restaurants and certain retail establishments to balance the need to allow individuals to access food and other essential materials with the need to limit unnecessary person-to-person contact; and

WHEREAS, Executive Order No. 104 (2020) deemed a subset of businesses as "essential," including grocery/food stores, pharmacies, medical supply stores, gas stations, healthcare facilities, and ancillary stores within healthcare facilities, and it authorized the State Director of Emergency Management, who is the Superintendent of State Police, to make additions, amendments, clarifications, exceptions, and exclusions to that list; and

WHEREAS, Executive Order No. 104 (2020) made clear that such essential businesses may continue operating without limits on their scope of service or hours of operation, absent further amendments by the State Director of Emergency Management; and

WHEREAS, Executive Order No. 104 (2020) and subsequent Administrative Orders issued by the State Director of Emergency Management also placed restrictions on other businesses' scope of service and hours of operation, and also placed restrictions on the size of gatherings in the State; and

WHEREAS, as of March 20, 2020, according to the Centers for Disease Control and Prevention ("CDC"), there were more than 234,000 confirmed cases of COVID-19 worldwide, with over 9,800 of those cases having resulted in death; and

WHEREAS, as of March 20, 2020, there were more than 15,000 confirmed cases of COVID-19 in the United States, with at least 201 of those cases having resulted in death; and

WHEREAS, as of March 20, 2020, there were at least 890 positive cases of COVID-19 in New Jersey, with at least 11 of those cases having resulted in death; and

WHEREAS, accommodating work-from-home arrangements is an effective means to ensure continuity of operations while also limiting person-to-person contact; and

WHEREAS, the CDC has recommended employers to establish policies and practices to increase the physical distance among employees and between employees; and

WHEREAS, permitting the workforce to work from home may reduce stress on the State's child care system; and

WHEREAS, as of March 19, 2020, I have instructed all State departments and agencies to utilize work-from-home arrangements for both essential and non-essential employees wherever feasible; and

WHEREAS, given the rapidly rising incidence of COVID-19, temporarily closing non-essential retail businesses will strengthen New Jersey's efforts to slow the spread of COVID-19; and

WHEREAS, even as we institute social distancing measures, the number of COVID-19 cases in New Jersey is likely to increase for the immediate future, meaning we must take all possible steps to preserve our health care system's capacity to treat those who require emergency or intensive care; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The operative paragraphs of Executive Order No. 104 (2020) are hereby superseded in full. The factual findings of Executive Order No. 104 (2020) remain applicable except to the extent they are in conflict with the factual findings in this or any intervening Executive Order.

2. All New Jersey residents shall remain home or at their place of residence unless they are 1) obtaining goods or services from essential retail businesses, as described in Paragraph 6; 2) obtaining takeout food or beverages from restaurants, other dining establishments, or food courts, pursuant to Paragraph 8; 3) seeking medical attention, essential social services, or assistance from law enforcement or emergency services; 4) visiting family or other individuals with whom the resident has a close personal relationship, such as those for whom the individual is a caretaker or romantic partner; 5) reporting to, or performing, their job; 6) walking, running, operating a wheelchair, or engaging in outdoor activities with immediate family members, caretakers, household members, or romantic partners while following best social distancing practices with other individuals, including staying six feet apart; 7) leaving the home for an educational, religious, or political reason; 8) leaving because of a reasonable fear for his or her health or safety; or 9) leaving at the direction of law enforcement or other government agency.

3. When in public, individuals must practice social distancing and stay six feet apart whenever practicable, excluding immediate family members, caretakers, household members, or romantic partners.

4. Individuals who have to travel pursuant to Paragraph 2 should only use public transportation only if they have no other feasible choice. Individuals who ride public transportation should abide by best social distancing practices, including making

- e. Convenience stores;
- f. Ancillary stores within healthcare facilities;
- g. Hardware and home improvement stores;
- h. Retail functions of banks and other financial institutions;
- i. Retail functions of laundromats and dry-cleaning services;
- j. Stores that principally sell supplies for children under five years old;
- k. Pet stores;
- l. Liquor stores;
- m. Car dealerships, but only to provide auto maintenance and repair services, and auto mechanics;
- n. Retail functions of printing and office supply shops; and
- o. Retail functions of mail and delivery stores.

7. Any essential retail business whose brick-and-mortar premises remain open to the public shall abide by social distancing practices to the extent practicable while providing essential services. These include all reasonable efforts to keep customers six feet apart and frequent use of sanitizing products on common surfaces.

8. All restaurants, cafeterias, dining establishments, and food courts, with or without a liquor license, all bars, and all other holders of a liquor license with retail consumption privileges, are permitted to operate their normal business hours, but are limited to offering only food delivery and/or take-out services in accordance with their existing liquor licenses. If alcoholic beverages are to be sold from a restaurant, dining establishment or bar with a liquor license, such sales shall be

limited to original containers sold from the principal public barroom. The on-premises consumption of alcohol is prohibited. All retail sales of alcoholic beverages by limited brewery licensees, restricted brewery licensees, plenary and farm winery licensees (and associated salesrooms), craft distillery licensees and cidery and meadery licensees must be in original containers and must be sold through customer pick up and/or delivered by licensees in accordance with their existing licenses.

9. All recreational and entertainment businesses, including but not limited to the following list, must close to the public as long as this Order remains in effect. The State Director of Emergency Management, who is the Superintendent of State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to this list:

- a. Casino gaming floors, including retail sports wagering lounges, and casino concert and entertainment venues. Online and mobile sports and casino gaming services may continue to be offered notwithstanding the closure of the physical facility.
- b. Racetracks, including stabling facilities and retail sports wagering lounges. Mobile sports wagering services may continue to be offered notwithstanding the closure of the physical facility.
- c. Gyms and fitness centers and classes.
- d. Entertainment centers, including but not limited to, movie theaters, performing arts centers, other concert venues, and nightclubs.
- e. All indoor portions of retail shopping malls. Restaurants and other stores located within

shopping malls that have their own external entrances open to the public, separate from the general mall entrance, may remain open pursuant to the terms and directives of this Order for operating hours and takeout or food delivery services. All entrances and exits to the common area portions of retail shopping malls must remain closed.

- f. All places of public amusement, whether indoors or outdoors, including but not limited to, locations with amusement parks, water parks, aquariums, zoos, arcades, fairs, children's play centers, funplexes, theme parks, bowling alleys, family and children's attractions.
- g. Facilities where personal care services are performed that, by their very nature, result in noncompliance with social distancing guidelines, including but not limited to cosmetology shops; barber shops; beauty salons; hair braiding shops; nail salons; electrology facilities; spas, including day spas and medical spas, at which solely elective and cosmetic medical procedures are performed; massage parlors, tanning salons, tattoo parlors, and public and private social clubs, whether or not they serve alcohol, including but not limited to facilities owned or operated by the American Legion, Veterans of Foreign Wars, Knights of Columbus, and any other social clubs associated with community service organizations. This excludes any health facilities that provide medically necessary or therapeutic services.

h. All municipal, county, and State public libraries, and all libraries and computer labs at public and private colleges and universities.

10. All businesses or non-profits in the State, whether closed or open to the public, must accommodate their workforce, wherever practicable, for telework or work-from-home arrangements. For purposes of this order, "telework" means the practice of working from home or alternative locations closer to home through the use of technology that equips the individual to access necessary materials.

11. To the extent a business or non-profit has employees that cannot perform their functions via telework or work-from-home arrangements, the business or non-profit should make best efforts to reduce staff on site to the minimal number necessary to ensure that essential operations can continue. Examples of employees who need to be physically present at their work site in order to perform their duties include, but are not limited to, law enforcement officers, fire fighters, and other first responders, cashiers or store clerks, construction workers, utility workers, repair workers, warehouse workers, lab researchers, information technology maintenance workers, janitorial and custodial staff, and certain administrative staff.

12. All public, private, and parochial preschool program premises, and elementary and secondary schools, including charter and renaissance schools, shall remain closed to students as long as this Order remains in effect.

13. All institutions of higher education shall continue to cease such in-person instruction as long as this Order remains in effect. The Secretary of the Office of Higher Education shall have the authority to grant a waiver to allow in-person instruction to students on a case-by-case basis where a compelling rationale to

allow such access exists. The Secretary of the Office of Higher Education shall coordinate with institutions of higher education to determine appropriate student housing conditions for those students who reside in on-campus housing as their primary residence.

14. The Commissioner of the Department of Education ("DOE"), in consultation with the Commissioner of DOH, shall be authorized to permit schools to remain open on a limited basis for the provision of food or other essential, non-educational services, or for educational or child care services if needed in emergency situations after consultation with the Commissioner of DOH. The Commissioner of DOE shall also have the authority to close any other career or training facilities over which he has oversight, after consultation with the Commissioner of DOH.

15. The Commissioner of DOE shall continue working with each public school district, and private and parochial schools as appropriate, to ensure that students are able to continue their educations during this time period through appropriate home instruction. Local school districts, charter schools, and renaissance schools, in consultation with the Commissioner of DOE, shall have the authority and discretion to determine home instruction arrangements as appropriate on a case-by-case basis to ensure all students are provided with appropriate home instruction, taking into account all relevant constitutional and statutory obligations.

16. The Secretary of the Department of Agriculture, in conjunction with the Commissioner of DOE, shall take all necessary actions to ensure that all students eligible for free or reduced meals shall continue to receive the services or supports necessary to meet nutritional needs during closures.

17. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the provision of health care or medical services to members of the public.

18. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way access to essential services for low-income residents, including but not limited to food banks.

19. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of newspapers, television, radio, and other media services.

20. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of law enforcement agencies.

21. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of the federal government, or the movement of federal officials in New Jersey while acting in their official capacity.

22. In accordance with N.J.S.A. App. A:9-33, et seq., as supplemented and amended, the State Director of Emergency Management, who is the Superintendent of State Police, through the police agencies under his control, to determine and control the direction of the flow of vehicular traffic on any State or interstate highway, municipal or county road, and any access road, including the right to detour, reroute, or divert any or all traffic and to prevent ingress or egress from any area that, in the State Director's discretion, is deemed necessary for the protection of the health, safety, and welfare of the public, and to remove parked or abandoned vehicles from such roadways as conditions warrant.

23. The Attorney General, pursuant to the provisions of N.J.S.A. 39:4-213, shall act through the Superintendent of State Police, to determine and control the direction of the flow of

vehicular traffic on any State or interstate highway, municipal or county road, and any access road, including the right to detour, reroute, or divert any or all traffic, to prevent ingress or egress, and to determine the type of vehicle or vehicles to be operated on such roadways. I further authorize all law enforcement officers to enforce any such order of the Attorney General or Superintendent of State Police within their respective municipalities.

24. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully in all matters concerning this Executive Order.

25. Penalties for violations of this Executive Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50.

26. This Order shall take effect on Saturday, March 21, 2020, at 9:00 p.m., and shall remain in effect until revoked or modified by the Governor, who shall consult with the Commissioner of DOH as appropriate.

GIVEN, under my hand and seal this
21st day of March,
Two Thousand and Twenty, and
of the Independence of the
United States, the Two
Hundred and Forty-Fourth.

[seal]

/s/ Philip D. Murphy
Governor

Attest:

/s/ Matthew J. Platkin
Chief Counsel to the Governor

STATE OF NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY DIVISION OF NEW JERSEY STATE
POLICE OFFICE OF EMERGENCY MANAGEMENT

ADMINISTRATIVE ORDER

GATHERINGS

No. 2020-4

WHEREAS, on March 9, 2020, through Executive Order No. 103, the facts and circumstances of which are adopted by reference herein, the Governor declared both a Public Health Emergency and a State of Emergency throughout the State due to the public health hazard posed by Coronavirus disease 2019 (COVID-19); and

WHEREAS, to further protect the health, safety, and welfare of New Jersey residents by, among other things, reducing the rate of community spread of COVID-19, the Governor issued Executive Order No. 107 (2020) on March 21, 2020, the facts and circumstances of which are also adopted by reference herein, which established enhanced social mitigation strategies for combatting COVID-19; and

WHEREAS, Executive Order No. 107 cancelled gatherings of individuals, such as parties, celebrations, or other social events, unless otherwise authorized by Executive Order No. 107; and

WHEREAS, pursuant to paragraph 5 of Executive Order No. 107 (2020), the Governor granted the State Director of Emergency Management, who is the

Superintendent of State Police, the discretion to make clarifications and issue orders

related to the provisions regarding the gatherings of individuals;

NOW, THEREFORE, I, Patrick J. Callahan, State Director of Emergency Management, hereby ORDER as follows:

1. Pursuant to paragraph 5 of Executive Order No. 107 (2020), it is hereby clarified that gatherings of 10 persons or fewer are presumed to be in compliance with the terms and intentions of the Executive Order, unless clear evidence exists to the contrary.
2. This ORDER shall take effect concurrently with the effective date and time of Executive Order No. 107 (2020), which is Saturday, March 21, 2020 at 9:00 p.m., and shall remain in effect for as long as Executive Order No. 107 (2020) remains in effect or until I issue a subsequent amending Administrative Order.

March 21, 2020

Colonel Patrick J. Callahan

State Director of Emergency Management

vehicle or open their windows or roofs when in proximity with other individuals could result in significant person-to-person contact, meaning that there must be careful limits whenever individuals gather while remaining in their vehicles; and

WHEREAS, permitting curbside pickup at non-essential retail businesses is reasonable in that it avoids unnecessary contact between customers and staff in enclosed spaces, and instead only allows for the similar amount of limited contact that might happen when products are being delivered to a residence; and

WHEREAS, by contrast, the extensive interactions that would happen at in-person gatherings and that would happen from in-store retail operations continue to present a significant risk, and so the general ban on gatherings and the restrictions on in-store operations for non-essential retail businesses cannot be lifted at this time; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq. and N.J.S.A. App. A:9-33 et seq., and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The physical operations of all construction projects that were not designated as essential in Executive Order No. 122 (2020) are permitted to resume, subject to the conditions in paragraph 2 of this Order.

wear gloves while on the premises. Businesses must provide, at their expense, such face coverings and gloves for their employees. If a visitor refuses to wear a cloth face covering for non-medical reasons and if such covering cannot be provided to the individual by the business at the point of entry, then the business must decline entry to the individual. Nothing in the stated policy should prevent workers or visitors from wearing a surgical-grade mask or other more protective face covering if the individual is already in possession of such equipment, or if the businesses is otherwise required to provide such worker with more protective equipment due to the nature of the work involved. Where an individual declines to wear a face covering on the premises due to a medical condition that inhibits such usage, neither the business nor its staff shall require the individual to produce medical documentation verifying the stated condition;

- i. Require infection control practices, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal;
- j. Limit sharing of tools, equipment, and machinery;
- k. Where running water is not available, provide portable washing stations with soap and/or alcohol-based hand sanitizers that have greater than 60% ethanol or 70% isopropanol;

- l. Require frequent sanitization of high-touch areas like restrooms, breakrooms, equipment, and machinery;
- m. When the worksite is an occupied residence, require workers to sanitize work areas and keep a distance of at least six feet from the occupants; and
- n. Place conspicuous signage at entrances and throughout the worksite detailing the above mandates.

3. Paragraph 2 of Executive Order No. 122 (2020) is hereby superseded in full. Paragraph 3 of that Order is hereby superseded to the extent that it applied to businesses engaged in essential construction projects. New Jersey Office of Emergency Management (NJOEM) Administrative Order No. 2020-11 is hereby superseded in full.

4. Any gathering that adheres to all of the following rules does not violate Paragraph 5 of Executive Order No. 107 (2020):

- a. Attendees participating in the gathering must arrive in a vehicle and they must remain in that same vehicle during the entire gathering;
- b. Each attendee's vehicle must remain entirely closed at all times, meaning that the windows, doors, sunroofs, and tops of the vehicle must be closed at all times, unless:
 - i. The vehicle is more than six feet from any other vehicle or individual, except for, as applicable, the limited number of individuals organizing or maintaining the gathering; or

- ii. A law enforcement officer, appropriate public official, or private security guard asks any attendee to open the vehicle's windows, doors, sunroofs, and/or tops.
- c. If there are individuals organizing or maintaining the gathering, and who are not in closed vehicles, such individuals must follow all applicable Executive Orders and Administrative Orders, and must wear cloth face coverings or more protective face coverings in any settings where other social distancing measures are difficult to maintain, except where doing so would inhibit that individual's health; and
- d. To the degree that a gathering requires pre-payment, or seeks donations of any kind, contactless options for pre-payment or donation, such as online or by telephone, must be offered wherever feasible.

5. If an individual leaves their home to participate in any gathering in accordance with Paragraph 4 of this Order, it shall not be a violation of Paragraph 2 of Executive Order No. 107 (2020).

6. If a recreational and entertainment event adheres to the rules laid out in Paragraph 4 of this Order, it will also not be a violation of Paragraph 9 of Executive Order No. 107 (2020). Paragraph 9 of Executive Order No. 107 (2020) is hereby superseded to the extent that it prohibited recreational and entertainment events where customers do not leave their vehicles.

7. Nothing in Paragraph 4 of this Order shall prevent an individual from leaving a vehicle, opening a vehicle's windows, sunroofs, doors, and/or tops, and/or approaching a vehicle, if done to protect their health or safety or the health or safety of another individual, or to access a restroom.

8. Where a gathering does not adhere to Paragraph 4 of this Order, gatherings of 10 persons or fewer are in compliance with the terms of Section 5 of Executive Order No. 107 (2020), while gatherings of more than 10 persons are in violation of that Executive Order.

9. Non-essential retail businesses are permitted to reopen to the public, but only where they adopt policies that include, at minimum, the following requirements:

- a. Customers shall not be permitted to enter the brick-and-mortar premises, but shall be permitted to pick up goods outside of the establishment that they have already ordered ("curbside pickup");
- b. In-store operations shall be limited, wherever feasible, to those employees who are responsible for the operations required for curbside pickup;
- c. Customer transactions shall be handled in advance by phone, email, facsimile, or other means that avoid person-to-person contact, wherever feasible;
- d. Customers shall notify the retailer by text message, email, or phone once they arrive, whenever feasible, or make best efforts to schedule their arrival time in advance. The customer shall be asked to remain in their vehicle, if arriving by car, until store staff delivers the purchase;

and gloves for their employees. Nothing in the stated policy should prevent workers from wearing a surgical-grade mask or other more protective face covering if the individual is already in possession of such equipment, or if the business is otherwise required to provide such worker with more protective equipment due to the nature of the work involved.

10. The State Director of Emergency Management, who is the Superintendent of State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to the terms of this Order.

11. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully in all matters concerning this Executive Order, and to cooperate fully with Administrative Orders issued pursuant to this Executive Order.

12. No municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of this Order or which will or might in any way interfere with or impede the achievement of this Order.

13. Penalties for violations of this Executive Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50.

14. Paragraphs 4-8 shall take effect immediately and Paragraphs 1-3 and 9 shall take effect at 6:00 a.m. on Monday, May 18, 2020. This Order shall remain in effect until revoked or modified by the Governor.

GIVEN, under my hand and seal this
13th day of May,
Two Thousand and Twenty, and of
the Independence of the United
States, the Two Hundred and
Forty-Fourth.

[seal]

/s/ Philip D. Murphy
Governor

Attest:

/s/ Matthew J. Platkin
Chief Counsel to the Governor

EXECUTIVE ORDER NO. 148

WHEREAS, in light of the dangers posed by Coronavirus disease 2019 ("COVID-19"), I issued Executive Order No. 103 on March 9, 2020, the facts and circumstances of which are adopted by reference herein, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, through Executive Order Nos. 119 and 138 (2020), issued on April 7, 2020, and May 6, 2020, respectively, the facts and circumstances of which are adopted by reference herein, I declared that the COVID-19 Public Health Emergency continued to exist and declared that all Executive Orders and Administrative Orders adopted in whole or in part in response to the COVID-19 Public Health Emergency remained in full force and effect; and

WHEREAS, in accordance with N.J.S.A. App. A:9-34 and -51, I reserve the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, as COVID-19 continued to spread across New Jersey and an increasing number of individuals required medical care or hospitalization, I issued a series of Executive Orders pursuant to my authority under the New Jersey Civilian Defense and Disaster Control Act and the Emergency Health Powers Act, to protect the public health, safety, and welfare against the emergency created by COVID-19, including Executive Order Nos. 104-133, Nos. 135-138, and Nos. 140-147 (2020), the facts and circumstances of which are all adopted by reference herein; and

WHEREAS, among these actions, and in recognition that the Centers for Disease Control and Prevention ("CDC") has advised that social mitigation strategies for combatting COVID-19 require

spread and prevent future outbreaks of COVID-19 and protect the health, safety, and welfare of New Jersey residents; and

WHEREAS, maintaining the overall social distancing and mitigation requirements in place while gathering in open-air outdoor spaces, particularly by maintaining a six-foot distance from other individuals, is imperative to continuing to reduce the ongoing risk of community spread of COVID-19; and

WHEREAS, as public health experts have observed, the higher the number of people an individual interacts with at a gathering contribute to a greater risk of COVID-19 spread, and so large in-person gatherings where it is difficult for individuals to remain spaced six feet apart or more pose an increased risk, which also means that outdoor activities should be prioritized where social distancing can be maintained as much as possible; and

WHEREAS, in order to reduce the continued risk of widespread transmission of COVID-19 at large gatherings, a number of other states that have begun to relax restrictions on gatherings of 10 people or more have imposed a limit on outdoor gatherings up to 25 people, including Pennsylvania, even as states still maintain more stringent requirements for gatherings indoors; and

WHEREAS, it is likewise appropriate to limit outdoor gatherings in our State to no more than 25 people to prevent increased transmission through super-spreading events and large community gatherings; and

WHEREAS, even as the State allows outdoor gatherings in open-air spaces and recreational campgrounds, due to the ongoing risk of community spread of COVID-19, the extensive interactions that occur at gatherings in indoor places and certain indoor retail, recreational, and entertainment operations continue to

present a significant risk, and so the prohibition of indoor gatherings of more than 10 individuals, and the restrictions on the indoor operations of certain retail, recreational, and entertainment businesses, have not been lifted at this time; and

WHEREAS, the State's restrictions on gatherings are tailored to the harms they present, regardless of the purpose of any such gathering, meaning that indoor in-person gatherings are limited to 10 persons, outdoor in-person gatherings are limited to 25 persons so long as all persons remain six feet apart at all times, and any number of individuals may participate in a gathering where all participants remain in their vehicles, given the relative risks of COVID-19 transmission presented by each scenario; and

WHEREAS, recreational campgrounds in the State provide popular outdoor lodging and recreation options during the summer months that allow for limited person-to-person contact and involve appropriate social distancing measures, and thus can also resume consistent with the State's framework on outdoor recreation and the relative risks of COVID-19 transmission; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

- g. If there are individuals organizing or maintaining the gathering, they should, where applicable, demarcate six feet of spacing in the area of the gathering to demonstrate appropriate spacing for social distancing, such as through the placement of cones, flags, or other markings;
- h. If seating is provided, such as chairs or mats, all seating must be limited to single individuals, except for immediate family members, caretakers, household members, or romantic partners, and must be placed six feet apart at all times, and such seating must be sanitized before and after that individual's use in accordance with CDC guidelines;
- i. If any physical items, including equipment, are provided, such items may not be shared by anyone except for immediate family members, caretakers, household members, or romantic partners, and such physical items must be sanitized before and after use; and
- j. To the degree the gathering requires pre-payment, or seeks donations of any kind, contactless options for pre-payment or donation, such as online or by telephone, must be offered wherever feasible.

2. Any outdoor recreational business or activity permitted to reopen to the public or their members under Paragraph 1 of Executive Order No. 147 (2020), and any charter fishing services and for-hire vessels permitted to reopen to the public under Paragraph 1 of Executive Order No. 146 (2020), must adopt policies that limit capacity to, at most, the number that ensures all

6. Nothing in this Order shall prevent an individual at a gathering from coming within six feet of another person, or going indoors, if done to protect their health or safety or the health or safety of another individual.

7. Nothing in this Order shall prevent professional athletes from fulfilling their job duties, including when those job duties may require person-to-person contact, consistent with Paragraph 10 of Executive Order No. 107 (2020).

8. Notwithstanding Paragraph 12 of Executive Order No. 107 (2020), schools may allow individuals, including students, on to their premises, but only to engage in the passive recreational activities authorized by Paragraph 1 of Executive Order No. 133 (2020) or to participate in a gathering authorized by Executive Order No. 142 (2020) or by this Order.

9. All private recreational campgrounds are permitted to reopen to the public, but shall adopt policies that include, at a minimum, the following requirements:

- a. Require that individuals maintain a six-foot distance from other individuals that are not immediate family members, caretakers, household members, or romantic partners;
- b. Establish appropriate site-specific physical distancing between occupied fixed camping units, including but not limited to all cottages, cabins, and tent and RV camping sites;
- c. Require that reservations, cancellations and pre-payments be made via electronic or telephone reservation systems to limit physical interactions. Such policies shall, wherever possible, consider

populations that do not have access to internet service or credit cards;

- d. Install a physical barrier, such as a shield guard, between visitors and employees wherever feasible or otherwise ensuring six feet of distance between those individuals;
- e. Limit the use of equipment rented or otherwise provided by the campground to one person at a time, excluding immediate family members, caretakers, household members, or romantic partners;
- f. Demarcate and post signs that denote six feet of spacing in all public spaces, communal areas, and other applicable areas, whenever possible;
- g. Employees, visitors, and other individuals should wear face coverings in any setting at recreational campgrounds where other social distancing measures are difficult to maintain, except where doing so would inhibit that individual's health, or where the individual is under two years of age;
- h. Require infection control practices, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal;
- i. Provide employees break time for repeated handwashing throughout the workday;
- j. Provide sanitization materials, such as hand sanitizer and sanitizing wipes, to employees and visitors;

- m. Place additional restrictions on areas of the campground, as necessary, to limit person-to-person interactions and facilitate appropriate social distancing;
 - n. Immediately separate and send home workers who appear to have symptoms consistent with COVID-19 illness upon arrival at work or who become sick during the day;
 - o. Promptly notify workers of any known exposure to COVID-19 at the worksite, consistent with the confidentiality requirements of the Americans with Disabilities Act and any other applicable laws;
 - p. Clean and disinfect the worksite in accordance with CDC guidelines when a worker at the site has been diagnosed with COVID-19 illness; and
 - q. Continue to follow guidelines and directives issued by the DOH, the CDC and the Occupational Health and Safety Administration, as applicable, for maintaining a clean, safe and healthy work environment.
10. The following shall remain closed to the public at recreational campgrounds:
- a. Picnic areas;
 - b. Playgrounds;
 - c. Pavilions; and
 - d. Other buildings, amenities, or facilities, except for restrooms and shower facilities.

any nature whatsoever, to cooperate fully in all matters concerning this Order, and to cooperate fully with Administrative Orders issued pursuant to this Order.

16. No municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of this Order, or which will or might in any way interfere with or impede its achievement.

17. Penalties for violations of this Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50.

18. This Order shall take effect immediately, and shall remain in effect until revoked or modified by the Governor, who shall consult with the Commissioner of DOH as appropriate.

GIVEN, under my hand and seal this
22nd day of May,
Two Thousand and Twenty, and
of the Independence of the
United States, the Two
Hundred and Forty-Fourth.

[seal]

/s/ Philip D. Murphy
Governor

Attest:

/s/ Matthew J. Platkin
Chief Counsel to the Governor

Exhibit “7”

Clark Letter



May 15, 2020

The Honorable Phil Murphy
Office of Governor
PO Box 001
Trenton, NJ 08625

Dear Governor Murphy,

Thank you for your efforts to minimize the impact of Covid-19 on the citizens of New Jersey. I am praying for God to keep you and your family safe during this time. I will continue to pray for God to give you wisdom as you help navigate our state through this crisis.

I know you feel a great need to lead your family and the citizens of New Jersey. You would consider yourself delinquent if you did not fulfill your duties. It is your God-given responsibility. You feel it is your calling. I respect you in your position as governor.

As a pastor, I too must lead our church family. The Bible teaches that pastors are shepherds. It is my God-given responsibility. It is my calling. Right now, the sheep are scattered. We must bring them back into the fold of our building. During this traumatic and difficult time, church members need their pastors. It is imperative that churches in New Jersey be immediately categorized as essential, so we as pastors can care for our flocks the way God commands us.

Jesus said, "I will build my church" (Matthew 16:18). Christ's Church is His organization on earth. The Bible says in Ephesians 5:23, "Christ is the head of the church." The Church belongs to Christ. He is in charge. Pastors are servants of Christ. We care for the people of His Church.

Solid Rock Baptist Church has a positive impact on Camden County. For thirty-eight years, our church has helped members of our community with countless physical, mental, emotional, social, financial, and spiritual problems. Our church IS essential. The decision to leave church off of the essential list was incorrect. Please correct this immediately and place churches on the essential list.

In March, we went to an online format until we could learn more about the virus and track its impact on people. We made this choice to protect our church family and because of our love for neighbors. We understand the virus is terrible. It is tragic to see the people who have been hurt by it. Our church is compassionate and caring, and the impact of the virus has saddened us. During this time of learning about the virus, we have patiently continued online services.

At this point, we as Americans better understand the specific dangers of the virus. We have been educated as to how to deal with its issues. Our church can and must open. We will do the right thing and in the right way. Churches are not reckless or selfish. Churches are loving and caring. We will be safe, sanitized, and using social distancing. Solid Rock Baptist Church will begin having services in our building on May 24, 2020.

P A S T O R S

Charles Clark, Jr. • Charles Clark III

420 South White Horse Pike • Berlin, New Jersey 08009
(856) 767-5056 • solidrockbaptist.org

Governor Murphy
Page 2

The First Amendment guarantees our rights and religious liberty. The New Jersey Constitution guarantees our religious liberty. The grocery store, hardware store, pet store, and liquor store do not have the same guaranteed rights as churches. The Founding Fathers put churches at the front of the line. Sadly, we have been taken out of line. This is unconstitutional and discriminatory against the churches of New Jersey. Our religious rights must be respected.

The Bible requires us to assemble. It is part of our faith to gather as a church. As Americans, we hold dear our religious rights. These rights must be preserved and passed to our children. Please do not infringe on our rights. Please immediately list churches as essential.

I am a life-long citizen of New Jersey. Solid Rock Baptist Church is a membership of New Jersey citizens, and they are great citizens. We are patriotic. We love our state and support our leaders. We support law enforcement. Please do not put us in the position of being at odds with our leaders. We are not looking for a conflict. However, we will stand for our religious rights here in New Jersey.

I am asking you to make churches essential, today, and take away this point of conflict for us.

Although we have not met, I hope to meet you in the near future. If I can ever be of service to you, please allow me the privilege. God bless you, your family, and our great state of New Jersey!

Sincerely,



Charles Clark III
Co-Pastor of Solid Rock Baptist Church
Berlin, New Jersey

Exhibit “8”

Gibbs Letter



GIBBS & ASSOCIATES LAW FIRM, LLC

May 18, 2020

SENT VIA US MAIL AND ELECTRONIC MAIL

Governor Phil Murphy
Office of Governor
PO Box 001
Trenton, NJ 08625

Re: Constitutional Right to Conduct In-Person Worship Services

Dear Governor Murphy:

I am writing you on behalf of our client, Pastor Charles Clark III and the congregation of the Solid Rock Baptist Church in Berlin, New Jersey (hereafter "Solid Rock"). Attorney Brian Tome of Reilly, McDevitt & Henrich, P.C. is serving as local counsel for our firm in this matter. I write to address important concerns of this church, and many other churches in New Jersey.

You have indicated through executive orders that churches in the State of New Jersey are non-essential and must remain closed. This misrepresentation of churches should be addressed post haste. That religious assemblies, guaranteed by the First Amendment and every state's constitution, are not considered essential services while New Jersey categorizes liquor stores, marijuana dispensaries, many stores and many businesses as essential is completely indefensible from a legal and practical viewpoint. Hundreds of pastors and churches believe that they have a constitutional right to worship. The United States Supreme Court stated: "Man's relation to his God was made no concern of the State. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views." *United States v. Ballard* (1944) 322 U.S. 78, at page 87.

This recategorization of religious assemblies is urgently needed now to assist the millions of people who are concerned, depressed, and reaching out for comfort during this horrific pandemic with its attendant displacement of our community norms. Solid Rock believes it can assemble for religious worship in a manner that will both protect congregations and give them hope and comfort, all in furtherance of this Administration's goals. We have been developing assembly policies with clear guidelines that will meet or exceed CDC recommendations for safety. Solid Rock plans to implement many of these guidelines to ensure safe worship services for all involved.



Governor Phil Murphy

May 18, 2020

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We believe that any health and safety concern the State of New Jersey has about a safely conducted indoor religious gathering would logically be present at all other exempted indoor activities. The lack of logic on how exempt businesses such as airports, bus and train stations, and assemblages for industrial or manufacturing work would pose less of a health risk than would church gatherings was extremely troubling to a Sixth Circuit panel last week. That Federal Court of Appeals was considering Kentucky's virtually identical executive order which, like Executive Order No. 107, banned gathering for, among other activities, religious worship, but permitted many secular gatherings.

[T]he orders do not permit soul-sustaining group services of faith organizations, even if the groups adhere to all the public health guidelines required of the other services.

Keep in mind that the Church and its congregants just want to be treated equally. They don't seek to insulate themselves from the Commonwealth's general public health guidelines. They simply wish to incorporate them into their worship services. They are willing to practice social distancing. They are willing to follow any hygiene requirements. They do not ask to share a chalice. The Governor has offered no good reason for refusing to trust the congregants who promise to use care in worship in just the same way it trusts accountants, lawyers, and laundromat workers to do the same.

Come to think of it, aren't the two groups of people often the *same people*—going to work on one day and going to worship on another? How can the same person be trusted to comply with social-distancing and other health guidelines in secular settings but not be trusted to do the same in religious settings? The distinction defies explanation, or at least the Governor has not provided one.

Roberts v. Neace, No. 20-5465, 2020 U.S. App. LEXIS 14933, at *8-9 (6th Cir. May 9, 2020) (emphasis in original).

Because the Kentucky governor failed to explain to the Court why his executive order allowed secular activities, but not religious activities, to gather, the Sixth Circuit concluded that "the unexplained breadth of the ban on religious services, together with its haven for numerous secular exceptions, cannot co-exist with a society that places religious freedom in a place of honor in the Bill of Rights: the First Amendment." *Roberts v. Neace*, No. 20-5465, 2020 U.S. App. LEXIS 14933, at *15-16 (6th Cir. May 9, 2020). The Court therefore enjoined Commonwealth officials from enforcing orders prohibiting gatherings for in-person religious worship which adhere to the COVID-19 public health requirements. *Id.* at 16. Although the Sixth Circuit decision is not precedential in this First Circuit, we believe the First Circuit would take this decision as instructive.



A federal court in North Carolina just granted a Temporary Restraining Order in the case of *Berean Baptist Church, et. al. v. Governor Roy A. Cooper* restricting the Governor's order limiting the free exercise of religion by churches state-wide.

Plaintiffs have demonstrated that they are likely to succeed on the merits because the assembly for religious worship provisions in BO 138 and the Guidance place a burden on the plaintiff's free exercise of religion. See, ~ Roberts, 2020 WL2316679, at *2-5. Plaintiffs "just want to be treated equally." Id. at *3. "They don't seek to insulate themselves from [North Carolina's] general public health guidelines." Id. "They simply wish to incorporate them into their worship services" indoors. Id. "They are willing to follow any hygiene requirements." Id. "The Governor has offered no good reason for refusing to trust the congregants who promise to use care in worship in just the same way he trusts accountants, lawyers, and laundromat workers to do the same." Id. "How can the same person be trusted to comply with social-distancing and other health guidelines in secular settings but not be trusted to do the same in religious settings?"

In the last couple weeks, Pastor Clark has conducted several Zoom meetings for hundreds of pastors in the Northeast, including many in New Jersey. While he is encouraging pastors to be engaged in supporting our national and state leadership in combatting the virus, the overwhelming concern on their part is the need to get back to worship and assembling in a strategic and safe manner to offer the comfort, hope and compassion for neighbors that can come only from a personal knowledge of Jesus Christ. Solid Rock and other churches need the comfort of "Not forsaking the assembling of ourselves together, as the manner of some is, but exhorting one another: and so much the more, as ye see the day approaching." (Hebrews 10:25).

Attorney General Barr has again issued guidance concerning balancing public safety with the preservation of civil rights. This memorandum issued April 27, 2020 stated:

As the Department of Justice explained recently in guidance to states and localities taking steps to battle the pandemic, even in times of emergency, when reasonable and temporary restrictions are placed on rights, the First Amendment and federal statutory law prohibit discrimination against religious institutions and religious believers. The legal restrictions on state and local authority are not limited to discrimination against religious institutions and religious believers. For example, the Constitution also forbids, in certain circumstances, discrimination against disfavored speech and undue interference with the national economy. If a state or local ordinance crosses the line from an appropriate exercise of authority to stop the spread of COVID-19 into an overbearing infringement of constitutional and statutory protections, the Department of Justice may have an obligation to address that overreach in federal court.



I am therefore directing the Assistant Attorney General for Civil Rights, Eric Dreiband, and Matthew Schneider, the U.S. Attorney for the Eastern District of Michigan, to oversee and coordinate our efforts to monitor state and local policies and, if necessary, take action to correct them. They should work not only with all Department of Justice offices and other federal agencies, but with state and local officials as well.

Many policies that would be unthinkable in regular times have become commonplace in recent weeks, and we do not want to unduly interfere with the important efforts of state and local officials to protect the public. But the Constitution is not suspended in times of crisis. We must therefore be vigilant to ensure its protections are preserved, at the same time that the public is protected.¹

Attorney General Barr has made it clear that there is a balance between protecting community and infringing on Constitutionally protected rights. This seems out of balance in New Jersey.

In furtherance of AG Barr's April 27, 2020 Initiative, the Department of Justice filed a Statement of Interest in a case brought by a church in Virginia against Governor Northam for preventing in-person meetings. In this brief, the DOJ argued three important points:²

1. Constitutional Rights Are Preserved During a Public Health Crisis

The Constitution allows government to take necessary, temporary measures to meet a genuine emergency. However, there is no pandemic exception to the Constitution and its Bill of Rights. The Constitution and its Bill of Rights must be upheld and preserved.

2. The Free Exercise Clause Prohibits Unequal Treatment of Religious Individuals and Organizations

The Free Exercise Clause guarantees to all Americans the "right to believe and profess whatever religious doctrine they desire." Prohibiting church services or other religious

¹ See "Attorney General William P. Barr Memorandum for the Assistant Attorney General for Civil Rights and All United States Attorneys concerning Balancing Public Safety with the Preservation of Civil Rights," available at: <https://www.justice.gov/opa/page/file/1271456/download> (last accessed April 28, 2020).

² See "The Department of Justice Files Statement of Interest in Support of Church That Ministers to Underserved Communities" available at: <https://www.justice.gov/opa/pr/department-justice-files-statement-interest-support-church-ministers-underserved-communities> (last accessed May 13, 2020) and See "The United States' Statement of Interest in Support of Plaintiff's Motion for an Injunction Pending Appeal" available at: <https://www.justice.gov/opa/press-release/file/1273211/download> (last accessed May 13, 2020).



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gatherings despite permitting various other gatherings does not appear to be generally applicable. Churches cannot be treated differently than other essential businesses.

3. The Compelling Interest / Least Restrictive Means Test Is a Searching Inquiry

A law burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny. This is a difficult standard for the Government to meet. Because a compelling interest must be evaluated in context rather than by reference to a broad general principle such as health or safety, and because the “least-restrictive-means standard is exceptionally demanding,” a court must engage in a searching inquiry.

We are asking that you would review these standards and reevaluate your position on churches being allowed to meet for in-person gatherings. We believe a review of the law and the circumstances surrounding churches in New Jersey will allow your executive order to change and come in compliance with the law.

It is our understanding that many churches in New Jersey are set to resume in-person worship services in the next several weeks. Solid Rock Baptist Church likewise will resume its services in the church buildings starting May 24, 2020. Accordingly, we request that you confirm in writing that churches in New Jersey can conduct in person meetings starting May 24, 2020.

Please reach out to our office with any questions or concerns you may have. We look forward to hearing from you immediately as our client needs to make important decisions for the weeks ahead.

Sincerely,

Gibbs & Associates Law Firm, LLC

A handwritten signature in black ink that reads "D. C. Gibbs, Jr."

David C. Gibbs, Jr.

Seth J. Kraus

Jonathan D. Gibbs

Admitted in Ohio

And

Reilly, McDevitt & Henrich, P.C.

Brian Tome

Admitted in DE, PA, NJ, MD