

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

THE BELOVED CHURCH, an Illinois Not- )  
for-Profit Corporation, and PASTOR )  
STEPHEN CASSELL, an individual )

Plaintiffs, )

vs. )

JAY ROBERT PRITZKER, Governor of the )  
State of Illinois, DAVID SNYDERS, Sheriff )  
of Stephenson County, Illinois, STEVE )  
SCHAIBLE, Chief of Police of the Village )  
of Lena, Illinois, and CRAIG BEINTEMA, )  
Administrator of the Department of Public )  
Health of Stephenson County, Illinois, in )  
their official capacities. )

Defendants. )

Case No. 20-cv-50153

**DEFENDANT, STEVE SCHAIBLE’S RESPONSE TO  
PLAINTIFFS’ REQUEST FOR A TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

NOW COMES the Defendant, Steve Schaible, Chief of Police of the Village of Lena, Illinois, by and through his counsel, the law firm of Peterson, Johnson & Murray Chicago, LLC and for his Response to Plaintiffs’ Request for a Temporary Restraining Order and Preliminary Injunction, states as follows:

**Statement of Facts**

On March 31, 2020, Plaintiffs were served with a “Cease and Desist Notice” by the Stephenson County Sheriff’s Office. (Dkt. # 1, ¶ 48). According to the Complaint, the Notice instructed Pastor Cassell that in the event of a violation of the Governor’s Executive Order 20-10, that the “Illinois Department of Public Health has the authority to order that a place be closed and made off limits to the public and further, that the he *may* be subjected to civil and criminal

penalties. (Emphasis added) (Dkt. # 1, ¶ 49). The Notice further advised that “police officers, sheriffs and all other officers in Illinois are authorized to enforce such orders.” (*Id.*). According to the Plaintiffs, in response to this Notice, they have suspended all communal activities at the Church building, including the Sunday services. Plaintiffs justifiably fear arrest, prosecution, fines, and jail time if they open their church building or hold religious services of any kind. (Dkt. #1, ¶ 50).

Nearly one month after receiving the aforementioned Notice, on April 30, 2020, Plaintiffs, filed a Verified Complaint against the Governor of Illinois, the Sheriff of Stephenson County, the Stephenson County Administrator of Public Health and Steve Schaible, Chief of Police for the Village of Lena, challenging the Governor’s authority to combat the spread of the novel Coronavirus-19 (“Covid-10”). (Dkt. # 1). Since filing their Complaint however, another Executive Order was issued. (See, Executive Order 2020-32 (COVID-19 Executive Order No. 30<sup>1</sup>)). This Executive Order recognizes organizations that provide charitable and social services; specifically, religious and secular nonprofit organizations, are “Essential Businesses and Operations”. (Executive Order 2020-32, § 2, ¶ 12(c)). Moreover, citizens of the State are presently free to “engage in the free exercise of religion, provided that such exercise must comply with Social Distancing Requirements and the limit on gatherings of more than ten people in keeping with CDC guidelines for the protection of public health. Religious organizations and houses of worship are encouraged to use online or drive-in services to protect the health and safety of their congregants”. (Executive Order 2020-32, § 2, ¶ 5(vi)).

Just as important as the new Executive Order, which moots the majority of Plaintiffs’ claims, the Verified Complaint is devoid any specific act or omission of Defendant Schaible. In

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<sup>1</sup> A true and accurate copy of the Governor’s Executive Order 2020-32 may be found at <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-32.aspx>; last viewed on May 1, 2020.

fact, other than listing him as the Chief of Police for the Village in which the Plaintiffs' premises are located (Dkt. # 1, ¶ 17), neither the Chief nor the Village are mentioned in the Complaint. This is likely because neither Defendant Schaible nor anyone from the Village of Lena have threatened any enforcement action against the Plaintiffs. In fact, they can affirmatively state by way of this Response that any actions to enforce Executive Order 2020-32 will come from the State and not the Village of Lena Police Department. In light of this fact, the Plaintiff's request for a temporary restraining order, preliminary injunction, all of the relief sought in Plaintiffs' Complaint against Defendant Schaible, should be denied.

### **Legal Standard**

A party seeking a preliminary injunction or temporary restraining order must demonstrate that (1) its claim has some likelihood of success on the merits; (2) traditional legal remedies would be inadequate; and (3) absent injunctive relief, it will suffer irreparable harm in the period prior to final resolution of its claims. *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of the United States of America, Inc.*, 549 F.3d 1079, 1085 (7th Cir. 2008). If the moving party satisfies these threshold requirements, the Court must balance the threatened injury to the moving party with the threatened harm the injunctive relief may inflict on the non-moving party. *Id.* The Court also must consider the public interest in either the grant or the denial of the injunctive relief. *Id.* In applying this, criteria, the Court should use a "sliding scale" approach: if a claim is very likely to succeed on the merits, less harm to the plaintiff will be required to justify injunctive relief and vice versa. *Abbott Labs. v. Mead Johnson & Co.*, 971 F.2d 6, 12 (7th Cir. 1992); *Ezell v. City of Chicago*, 651 F.3d 684, 694 (7th Cir. 2011). "The sliding scale approach is not mathematical in nature, rather `it is more properly characterized as subjective and intuitive, one which permits district courts to weigh the competing considerations and mold appropriate relief.'" *Abbott Labs. v. Mead Johnson*

& Co., 971 F.2d 6, 12 (7th Cir.1992).

### Argument

**I. Plaintiffs lack standing under Article III of the Constitution to bring this dispute before the Court and the issues raised by their motion for a temporary restraining order and preliminary injunction are not ripe for a judicial determination.**

Article III of the Constitution constrains the federal courts' authority to resolve only cases and controversies, and courts therefore have jurisdiction only over litigants who have standing to sue. *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 560 (1992). Article III standing consists of three minimum requirements: (1) injury in fact; (2) causation; and (3) redressability. *Id.* at 560-61. Here, Plaintiffs cannot satisfy the injury in fact requirement. As concerns the said requirement, the U.S. Supreme Court has noted:

It is not enough that the [plaintiff]'s complaint set forth facts from which we could imagine an injury sufficient to satisfy Article III's standing requirements, since we should not speculate concerning the existence of standing, nor should we imagine or piece together an injury sufficient to give plaintiff standing when it has demonstrated none. The plaintiff has the burden to clearly and specifically set forth facts to satisfy Article III standing requirements. If the plaintiff fails to meet its burden, this court lacks the power to create jurisdiction by embellishing a deficient allegation of injury.

*Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990).

In addition to the foregoing standards, it has further been observed that a plaintiff only suffered an "injury in fact if he suffered an invasion of a legally protected interest that is concrete, particularized, and actual or imminent." *Lujan*, 504 U.S. at 560. A concrete injury is not one that is conjectural or hypothetical. *Id.* at 560-61. A concrete injury must be one that results in a "demonstrable, particularized injury" to the plaintiff. *Warth v. Seldin*, 422 U.S. 490, 508 (1975) "The Supreme Court has 'repeatedly reiterated that 'threatened injury must be certainly impending

to constitute injury in fact’ and that ‘allegations of possible future injury’ are not sufficient.” *Whitmore*, 495 U.S. at 158.

Here, Plaintiffs have not shown an imminent injury to have standing to pursue a temporary restraining order. Plaintiffs allege that Pastor Cassell was personally served with a “Cease and Desist Notice” drafted by Defendant Beintema, the Public Health Administrator for Stephenson County, as concerned Executive Order 2020-10 promulgated by Defendant Pritzker on March 9, 2020. However, no facts are alleged supporting that Plaintiffs face a threat of arrest or other harm based upon Executive Order 2020-18 promulgated by Defendant Pritzker on April 1, 2020, or under Defendant Pritzker’s newly promulgated Executive Order 2020-32 (to which neither Plaintiff’s complaint nor motion for a temporary restraining order and preliminary injunction make reference), pursuant to which religious gatherings, including drive-in services, are permitted so long as social distancing guidelines are adhered to.

Plaintiffs’ motion basically concedes their lack of standing in as much as it reads: “Plaintiffs, therefore, *believe* they are and remain subject to the ‘adhere to’ command of the ‘Cease and Desist Notice,’ and also face threats of arrest by Defendant Pritzker and the Illinois State Police.” The alleged injury is thus speculative and does not constitute an actual, concrete, particularized, de facto injury required to support Article III standing and, instead, is the sort of conjectural or hypothetical allegation that deprives this Court of jurisdiction over Plaintiff’s action.

Relatedly, the issues raised by Plaintiffs’ motion for a temporary restraining order and preliminary injunction are not ripe for a judicial determination. A claim is not ripe for adjudication if “it rests upon contingent events that may or may not occur as anticipated, or indeed may not occur at all.” *Texas v. United States*, 523 U.S. 296, 300, (1998). As alluded to above, there has been no enforcement activity whatsoever against Plaintiffs as concerns Executive Orders 2020-18

and 2020-23, especially by the Village of Lena. As such, the issues raised by their motion for preliminary injunction are not ripe for a judicial determination.

## **II. The Plaintiffs' claims have been mooted by Executive Order 2020-32**

On April 30, 2020, Governor Pritzker signed Executive Order 2020-32.<sup>2</sup> Plaintiffs' claims were predicated upon religious services not being included as "Essential Activities" under prior Executive Orders. However, the Executive Order currently in place designates "the free exercise of religion" as part of the "Essential Activities". See, Section 2, Paragraph 5(vi). Pursuant to the Executive Order 2020-32, Illinois residents can engage in the free exercise of religion as long as they engage in Center for Disease Control Guidelines, limit gatherings of more than ten people. However, there are not limitations for online services and religious organizations can use "drive-in services to protect the health and safety of their congregants." *Id.*

Plaintiffs' Complaint and Motion for a Temporary Restraining Order and Preliminary Injunction were premised upon the prior Executive Orders that did not provide for exercise of religion in the order. However, this Executive Order now allows for such practices. Essentially, Executive Order 2020-32 has mooted the claims and arguments of Plaintiff. As noted, Article III of the Constitution. This requires an actual controversy at "all stages of review, not merely at the time the complaint is filed." *Campbell-Ewald Co. v. Gomez*, 577 U.S. \_\_\_, 136 S.Ct. 663, 669, 193 L.Ed.2d 571 (2016), quoting *Arizonaans for Official English v. Arizona*, 520 U.S. 43, 67, 117 S.Ct. 1055, 137 L.Ed.2d 170 (1997). "There is [] no case or controversy, and a suit becomes moot, when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Chafin v. Chafin*, 568 U.S. 165, 172, 133 S.Ct. 1017, 185 L.Ed.2d 1 (2013) (quoting

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<sup>2</sup> A copy of this Executive Order can be viewed at <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-32.aspx>.

*Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91, 133 S.Ct. 721, 184 L.Ed.2d 553 (2013)). “No matter how vehemently the parties continue to dispute the lawfulness of the conduct that precipitated the lawsuit, the case is moot if the dispute ‘is no longer embedded in any actual controversy about the plaintiffs’ particular legal rights.’” *Already, LLC*, 568 U.S. at 91, 133 S.Ct. 721 (quoting *Alvarez v. Smith*, 558 U.S. 87, 93, 130 S.Ct. 576, 175 L.Ed.2d 447 (2009)).

The issue here is whether Executive Order 2020-32 has mooted Plaintiffs’ challenge to the prior Executive Orders. Clearly, Executive Order 2020-32 specifically designates exercise of religion as essential. Plaintiffs’ motion only seeks to enjoin the defendants from Executive Orders 2020-10 and 2020-18, “and the announced upcoming executive order”. Doc. No. 7, p. 15. This prayer for relief does not consider the current designation of Essential Activities and the arguments in Plaintiffs’ motion have been mooted by Executive Order 2020-32.

### **III. Adoption of Arguments of Co-Defendants**

Steve Schaible, Chief of Police of the Village of Lena adopts and incorporates herein the arguments of the other Defendants set forth in their response briefs, to the extent applicable, as set forth fully herein. Chief Schaible will defer to the Governor’s definition of “drive-in services” as noted in this Court’s May 1, 2020 Minute Order (Doc. No. 16).

WHEREFORE, Defendant STEVE SCHAIBLE, Chief of Police of the Village of Lena, Illinois, respectfully requests that this Court enter an order denying Plaintiffs’ Motion for a Temporary Restraining Order and Preliminary Injunction and for any other relief that this Court deems necessary and just.

Respectfully submitted:  
STEVE SCHAIBLE, Chief of Police of the  
Village of Lena, Illinois

By: /s/ Paul O'Grady

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