

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK**

REV. STEVEN SOOS,)
)
REV. NICHOLAS STAMOS,)
)
DANIEL SCHONBRUN,)
)
ELCHANAN PERR and)
)
MAYER MAYERFELD)

Plaintiffs,)

v.)

ANDREW M. CUOMO, Governor of the)
State of New York, in his official capacity,)

LETITIA JAMES, Attorney General of the)
State of New York in her official capacity,)
and)

BILL DE BLASIO, Mayor of the City)
of New York, in his official capacity,)

Defendants.)

Case No. 1:20-CV-0651 (GLS/DJS)

**PLAINTIFFS’ MOTION FOR TEMPORARY A RESTRAINING ORDER
(WITH NOTICE) AND A PRELIMINARY INJUNCTION**

Come now Plaintiffs, and for all of the reasons stated in the supporting papers, respectfully request that this Court enter a temporary restraining order (with notice) and preliminary injunction pursuant to Fed. R. Civ. P. 65 against Defendants Governor Andrew M. Cuomo, Attorney General Letitia James, and New York City Mayor Bill de Blasio, preventing them from enforcing executive orders and plans that bar Plaintiffs from holding or attending indoor and outdoor religious services in a manner consistent with their sincerely held religious beliefs. The grounds for the emergente relief sought are summarized as follows:

1. Plaintiffs Rev. Steven Soos and Rev. Nicholas Stamos are Catholic priests in the North Country, New York. These plaintiffs have been consistently forbidden from holding or attending “congregate” worship services beyond an ever-changing maximum number of people, beginning with zero. Governor Cuomo’s latest relevant Executive Order, 202.38 issued on June 6, 2020, prevents Plaintiffs Soos and Stamos in the North Country from having Masses beyond 25% percent of their churches’ occupancy capacity, or with more than 10 people at any outdoor Mass.

2. Plaintiffs Daniel Schonbrun, Elchanan Perr, and Mayer Mayerfield are Orthodox Jewish congregants who reside in Brooklyn, New York. These plaintiffs remain subject to a 10-person limit applicable to Jewish worship services indoors or outdoors in New York City. This limit effectively criminalizes any Jewish congregation beyond the ten-person quorum of adult males (*minyan*) required for the conduct of Orthodox Jewish prayer services and also prevents their female and non-adult male family members from attending synagogue services.

3. All of the Plaintiffs have endured restrictions on in their in-person worship services for more than 90 days under the notion that religious gatherings are “non-essential” in the state’s effort to slow the spread of COVID-19. But, as shown in the accompanying memorandum of law, the infection rate of COVID-19 in New York has dramatically slowed since March.

4. And, in the past two weeks, Defendants have approved and exempted mass gatherings across New York demonstrating against the tragic death of George Floyd in Minnesota. These protests began more than 10 days ago and have involved thousands of people with little or no “social distancing” between protestors, and yet there is no evidence of any resulting outbreak of COVID-19. Plaintiffs, however, are willing to maintain social distancing and hygiene practices in their indoor and outdoor worship services, and their religious gatherings are far less crowded.

5. After months of silent obedience, and in view of defendants’ selectively granted

permission, days ago, for mass demonstrations that violate the rules to which Plaintiffs have been subjected, there is no longer any reason based on “public health” to delay seeking to attend religious gatherings on at least equal terms with other “essential” gatherings like mass protests, especially as the next Sabbath and Sunday holy day rapidly approach this weekend.

6. Otherwise, the unconstitutional restrictions on Plaintiffs’ religious services will be indefinite. The Governor’s current reopening plan does not authorize full house-of-worship reopenings until “Phase Four,” which has no definite beginning date and is far beyond Phases One and Two presently applicable to Plaintiffs.

7. But Defendants’ recent exemption for mass protests exposes the ongoing house-of-worship restrictions as arbitrary, irrational, and unjustifiably unequal. Defendants have made a value judgment favoring mass protests against racism without granting equal recognition to religious gatherings. This glaring hypocrisy—so contrary to our fundamental law—simply cannot stand.

8. As shown in the Verified Complaint, Exhibits and Memorandum of Law, the Defendants’ Orders interfere with Plaintiffs’ free exercise of religion, freedom of speech, right of assembly, right of expressive association, and equal protection of the law.

9. The Orders are also *ultra vires* defendant Cuomo’s limited authority under N.Y. Executive Law 29-a to declare a state of emergency and suspend the operation of laws, rules and regulations temporarily, but only, as that statute provides, “*Subject to the state constitution, the federal constitution and federal statutes and regulations...*” New York State Executive Law § 29-a, sec. 1. Cuomo had no authority to promulgate the subject detailed regulations of every aspect of the lives of more than 8 million New Yorkers, which constitute legislation by one man rather than the State Legislature.

10. Plaintiffs will suffer irreparable harm in the absence of a temporary restraining order and preliminary injunction, the balance of hardships tips strongly in their favor, and protecting their constitutional rights is in the public interest. An injunction would also preserve the *status quo ante*.

11. In support of this motion, Plaintiffs rely on the accompanying Memorandum of Law, the Verified Complaint, Exhibits to the Verified Complaint, and declaration of Plaintiffs' medical expert, Dr. George Delgado, and counsel's declaration concerning notice given.

WHEREFORE, Plaintiffs request:

- (a) that a temporary restraining order (with notice) be issued by this Court **in time for Sabbath services on Friday, June 12 (at sundown) and Sunday Masses on June 14**, temporarily restraining Defendants, their agents, employees, and those acting in concert with them from enforcing the Governor's Orders in a manner infringing on Plaintiffs' religious services;
- (b) in the alternative, a preliminary injunction hearing on an expedited basis;
- (c) such other relief as this Court deems just and proper.

Plaintiffs request that a bond be waived or that only a nominal bond be required.

Plaintiffs request oral argument to the extent the Court deems it useful and, under the circumstances, feasible.

Dated: June 10, 2020

Respectfully submitted,



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* *Pro Hac Vice* Application Pending

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