

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION
AT KANSAS CITY**

**ABUNDANT LIFE BAPTIST CHURCH
OF LEE'S SUMMIT, MISSOURI,
PLAINTIFF,**

VS.

JACKSON COUNTY, MISSOURI; AND

**JACKSON COUNTY HEALTH
DEPARTMENT; AND**

**FRANK WHITE, JR.,
IN HIS OFFICIAL CAPACITY AS
JACKSON COUNTY EXECUTIVE; AND**

**TROY SCHULTE, IN HIS OFFICIAL
CAPACITY AS JACKSON COUNTY
EMERGENCY COORDINATOR; AND**

**BRIDGETTE SHAFFER, IN HER
OFFICIAL CAPACITY AS HEALTH
DIRECTOR OF THE JACKSON COUNTY
HEALTH DEPARTMENT; AND**

**TRUMAN MEDICAL CENTER,
INCORPORATED.**

DEFENDANTS.

CASE No.

JURY TRIAL DEMANDED

VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

1. This is a pre-enforcement civil rights lawsuit that challenges unconstitutional and unlawful discrimination against religious institutions and persons in orders and plans

issued by Jackson County, Missouri; the Jackson County Health Department, and their leaders.

2. Like several other Kansas City metropolitan area locations, Jackson County, Missouri, has issued emergency public health orders in response to the threat posed by the novel Coronavirus Disease 2019, (COVID-19).

3. Under the current order, last amended April 16, 2020, Defendants generally directed businesses within the County to shut down and prohibited unauthorized public or private gatherings outside single households. The Order made exceptions for “Essential Business” activities. The current order is available at <https://www.jacksongov.org/DocumentCenter/View/6660/Jackson-County-Stay-at-Home-Order> (Ex. 1)

4. Plaintiff, as a religious organization within Jackson County, has made every effort to comply with the current order, including canceling its five weekly corporate worship services in Lee’s Summit and Blue Springs; and reducing services other than those activities identified as “Essential Business” activities under the Order, such as social services for disadvantaged persons, and Plaintiff has offered live-streaming video of its services as a less-desirable alternative for those who cannot attend in person.

5. On May 6, 2020, Defendants announced that progress had been made under measurable health criteria in Jackson County, stating that many “non-essential” activities could resume starting on and after May 11, 2020. Accordingly, Defendants issued an “Eastern Jackson County Recovery Plan Phase 1” (“Plan”) document containing relevant limits and guidance concerning resumption of activities on and after May 11, 2020, which is accessible at <https://www.jacksongov.org/DocumentCenter/View/6748/Recovery-Plan-Phase-1> (Ex. 2).

6. The Plan purports that the current order and future related orders are all part of a larger plan or scheme, such that the Current Order, Defendant's Plan, orders to effectuate the Plan, orders to effectuate future phases of the Plan, and Defendants' criteria, guidance, interpretations, and policies related to the plan, all constitute a unified set of laws, orders, guidance, interpretations and policies, responding to the same health emergency and issued under the same legal authority.

7. In the Plan, Jackson County (and the other Defendants) announced that non-essential Retail Stores, Personal Services, and Restaurants and Bars serving food could reopen to the public if they follow CDC recommended social distancing recommendations, adopt a Social Distancing Protocol, and restrict the number of individuals in a building using formulas based on the facility's occupancy load.

8. For example, under the new plan, a Retail Store in a building of less than 10,000 square feet will be allowed to use up to 25% of the occupancy load permitted under the applicable building or fire code; while a building with more than 10,000 square feet will be allowed to use up to 10% of the occupancy load permitted under the applicable building or fire code. *See* Ex. 2 at 8.

9. Defendants' Plan extends similar square-foot allowances to "Personal Services" businesses and "Restaurants and Bars Selling Food"; it imposes no square-foot limits on "Essential Businesses."

10. However, Defendants' Plan states that church facilities are subject to a "Large Gatherings and Social Events" limit, which is only ten people, regardless of the square footage of a meeting facility.

11. Plaintiff Abundant Life occupies worship sites in Lee's Summit and Blue Springs, Missouri. Its largest facility has an approved occupancy load of 4,740 persons. If engaged

in “Retail Sales” or a “Restaurant or Bar” in Phase I, Plaintiff would be able to admit 474 persons to that building while meeting or exceeding the CDC-recommended social distancing.

12. Because Defendants have classified Plaintiff’s “church” activities as “non-essential” and/or “large gatherings or social events,” Plaintiff will only be able to admit ten total persons—counting the pastor and staff-- to worship services on May 17, 2020, the first Lord’s Day after the May 11, 2020 start of the Plan. Plaintiff has much more than 10 staff.

13. Defendants’ orders differ from those of Kansas City, Missouri, a municipality that lies (in part) within Jackson County, in that the City of Kansas City permits churches to gather under the square-footage rules. Defendants Plan purports to apply only to “Eastern Jackson County.” Thus, by allowing more generous square footage rules in the western part of the County, Defendants cause confusion and further discrimination against Plaintiff because its locations happen to be in eastern Jackson County.

14. Defendants’ orders impermissibly discriminate against religiously-motivated gatherings, and in favor of commercially-motivated gatherings.

15. On April 14, 2020, United States Attorney General William Barr issued a statement that “the First Amendment and federal statutory law” also prohibit governments from:

impos[ing] special restrictions on religious activity that do not also apply to similar nonreligious activity. For example, if a government allows movie theaters, restaurants, concert halls, and other comparable places to assemble to remain open and unrestricted, it may not order houses of worship to close, limit their congregation size, or otherwise impede religious gatherings. Religious institutions must not be singled out for special burdens. [Statement of Attorney General William P. Barr. (Ex. 3)]

16. In his statement, Attorney General Barr also announced the Department of Justice had filed a Statement of Interest in support of a Mississippi church that allegedly sought to hold parking lot worship services before being criminally cited by local law enforcement. *See id.*; The United States’ Statement of Interest in Support of Plaintiffs, 4:20- cv-64-DMB-JMV) (N.D.Miss. 2020) (Ex. 4)

17. Missouri’s Constitution promises that “all men and women have a natural and infeasible right to worship Almighty God according to the dictates of their own consciences” Art. I, § 5, and that government “shall ensure that any person shall have the right to pray individually or *corporately* in a private or public setting so long as such prayer does not result in disturbance of the peace or disruption of a public meeting or assembly.” *Id* (emph. added).

18. This action includes claims under the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. §2000cc; the First and Fourteenth Amendments to the Constitution of the United States through 42 U.S.C. §1983; the Missouri Constitution, Article I, §§ 2, 5, 9 and 10; and the Missouri Religious Freedom Restoration Act, (“RFRA”), §§1.302 and 1.307, RSMo.

19. The suit seeks declaratory judgment and injunctive relief from this Court as to all Defendants and reasonable attorneys’ fees and expenses, in order to remedy the deprivation of the Plaintiff’s constitutional and civil rights.

20. In light of the plain terms of the Plan, Plaintiff and its worshipers faces an imminent and impossible choice: either a) violate their religious beliefs by failing to assemble for corporate worship on the Lord’s Day and at other times, and submit to a law that unjustly discriminates against their religion, or b) suffer fines, imprisonment or government-encouraged public shaming, for pastors and people, for following their

religious beliefs by engaging in corporate worship of the Almighty God with as many people as would be allowed in a retail business, restaurant or bar of similar size.

21. Civil rights litigants such as Plaintiff can challenge restrictions on their rights before Jackson County investigates, fines or incarcerates Jackson County worshipers.

JURISDICTION & VENUE

22. This Court has subject matter jurisdiction under 28 U.S.C. §1331 and 1343.

23. The acts in this suit occurred in Jackson County, Missouri, and Defendants reside in Jackson County, so venue is proper here. 28 U.S.C. §1391(b)(2)

24. This Court has authority to grant the requested declaratory relief. 28 U.S.C. §2201, *et seq.*, 42 U.S.C. §2000cc *et seq.*

25. This Court has authority to issue the requested injunctive relief. Fed.R.Civ.P. 65 and 28 U.S.C. §1343(3).

26. This Court has supplemental jurisdiction over the state claims under 28 U.S.C. § 1367.

27. This Court has authority to award the requested damages and fees; 28 U.S.C. §1343(3), 42 U.S.C. § 1988; and 42 U.S.C. §2000cc *et seq.*

PARTIES

28. Plaintiff Abundant Life Baptist Church of Lee's Summit, Missouri, ("Abundant Life") is a Missouri nonprofit corporation, with its principal location at 304 SW Persels Rd, Lee's Summit, Jackson County, Missouri 64081.

29. Plaintiff's lead pastor is Rev. Phil Hopper.

30. Defendant Jackson County, Missouri, is a county government within the State of Missouri, having adopted a constitutional home rule charter for its governance, pursuant to Article VI, Section 18(a) of the Missouri Constitution.

31. Defendant Jackson County Health Department is an administrative unit of Jackson County, Missouri, with administrative offices in Independence, Missouri; the Health Department's operations are undertaken by Defendant Truman Medical Center, Incorporated, a Missouri Nonprofit Corporation with its principal place of business in Kansas City, Missouri.

32. Defendant Frank White, Jr., is the Jackson County Executive, and is sued in his official capacity.

33. Defendant Bridgette Shaffer is the Jackson County Health Director, and is sued in her official capacity.

34. Defendant Troy M. Schulte is the Jackson County Administrator and Emergency Management Coordinator, and is sued in his official capacities.

ALLEGATIONS COMMON TO ALL COUNTS

PLAINTIFF ABUNDANT LIFE

35. Abundant Life is a Christian church, operating in Lee's Summit, Missouri, in eastern Jackson County.

36. Under the leadership of pastor Phil Hopper, Abundant Life has grown from a small house-sized church to include multiple sites in Jackson County, including Lee's Summit, Missouri; and Blue Springs, Missouri.

37. Abundant Life and Pastor Hopper sincerely believe that the Bible is the inspired Word of God and the sole authority for faith and practice, and that the Bible teaches,

among other things, the requirement to gather together for corporate prayer and worship.

38. Abundant Life's Lee's Summit location includes an auditorium, classrooms, children's educational facilities, youth educational facilities, a counseling center, and a food bank which provides food to needy persons in the community.

39. On Sundays, Abundant Life's Lee's Summit campus typically has three morning worship services open to the public, and up to 4,500 persons typically attend those services. Under applicable building and fire codes, the main building can safely accommodate 4,740 individuals.

40. Abundant Life also operates a Blue Springs location, which also holds Sunday services. Under applicable building and fire codes, Abundant Life's Blue Springs' building can safely accommodate at least 1,490 persons.

41. Each of Abundant Life's Sunday worship services typically include teaching, prayer, and music performances.

42. Due to Defendants' current stay at home order, Plaintiff Abundant Life has been unable to meet for worship or corporate prayer as it would normally, and has been unable to offer religious or community services to others on the same basis.

43. If persons were allowed to enter Abundant Life's property for religious purposes under the 10% rule that applies to Jackson County businesses in Phase 1, Abundant Life could accommodate up to 474 persons and staff at one service.

44. Abundant Life could host such persons while meeting or exceeding the CDC's social distancing criteria.

45. Abundant Life wishes to use its facilities for worship and prayer after the expiration or modification of the current stay-at-home order, which has been announced will occur on May 11, 2020.

46. Thus, Abundant Life wishes to meet for worship services and religious activities on and after May 17, 2020, but would only be able to use its 4,700-person building for ten people at a time.

47. If Abundant Life were to engage in retail sales, or served food and liquor as a bar, rather than religious worship at its Lee's Summit location, Jackson County's Phase I plan would allow 474 people in the building at a time while meeting or exceeding the CDC's guidelines.

48. During the week of April 27, 2020, employees of Abundant Life called Defendant Shaffer and requested a meeting to sit-down and talk through potential guidelines and religious liberty concerns; Abundant Life communicated that it desired to be a leader in supporting the community health and to assist in distributing accurate information to other churches who were asking Abundant Life for guidance.

49. Defendant Shaffer said that her superiors had not yet directed a response, and that Plaintiff could check the County's website for directions as it was approved.

DEFENDANTS' ACTIONS

50. Defendants' Plan and orders threaten to continue to deprive Plaintiff, its guests, and its employees of the free exercise of religion, as secured by the First Amendment.

51. Defendants' Order, policies and practices have imposed a substantial burden on Abundant Life's sincere religious exercise.

52. Defendants' plan and websites specifically target religious worship as a type of mass gathering, and Defendant's website contains a warning to all visitors that they should "Stay Home Worship Remotely." <https://www.jacksongov.org/1188/Stay-Home-Worship-Remotely>. Defendants website lists a link to Plaintiff's website where live-stream services are available, but the County does not mention Plaintiff's plans for in-person services after May 11, 2020.

53. Defendants' emergency orders carry the force of law, and warn that pursuant to §192.300, RSMo., and §192.320, RSMo., violation of the orders is a Class A misdemeanor, subject to fine, imprisonment, or both.

54. Defendants' Plan, criteria and guidance, purport to be issued pursuant to "the Missouri State Constitution, Statutes, Regulations, the Home Rule Charter, County Code Provisions, including, but not limited to the Missouri Code of State Regulations, Rules of Department of Health and Senior Services (19 CSR 20-20.020; 19 CSR 20-20.030; 19 CSR 20-20.040; 19 CSR 20-20.050) and Jackson County Code Chapter 40."

55. Defendant's Recovery Plan Phase I makes explains that it will form part of a unified plan of response to the novel coronavirus, and which will expand and contract business openings based on measurable criteria:

A shift to Phase I will be considered with observable progress on the following four criteria: (1) the number of new cases has declined for at least 14 days; (2) rapid diagnostic testing capacity is sufficient to test, at minimum, all people with COVID-19 symptoms, as well as close contacts and those in essential roles; (3) the healthcare system is able to safely care for all patients, including having appropriate personal protective equipment for healthcare workers; and (4) there is sufficient public health capacity to conduct contact tracing for all new cases and their close contacts. Enough progress on the aforementioned criteria has warranted a shift to Phase I of recovery efforts which will go into effect May 11th, 2020.

Phase II & III will continue to relax restrictions on businesses and activity as fewer mitigation strategies are necessary. Phase IV is the least stringent, and offers a “return-to-normal.”

56. The Phase I restrictions will initially start on May 11, 2020, and will continue through at least May 25, 2020, as the Plan says each phase will last a minimum of 14 days.

57. Further, the Phase I plan says restrictions are likely to return if there as any recurrence of coronavirus infections:

It is possible to return to a more stringent phase if key criteria are not met or if there is a spike in hospitalizations or deaths. Each phase will last a minimum of 14-days - consistent with the incubation period of SARS-CoV-2.

58. Therefore, Plaintiff believes the Phase I restrictions represent an ongoing threat to Plaintiff’s ability to open its doors for the duration of the coronavirus emergency, or until a vaccine or therapeutic treatment is discovered, which could be several years.

59. Defendants’ actions have already harmed Plaintiff in that Plaintiff is unable to communicate to viewers of its internet stream, its members, and others whether or not it will have in-person services available after May 11, 2020, for a set number of persons in a timely manner. Plaintiff should not be forced to choose between a) violating religious beliefs about corporate worship, or b) risking fines and imprisonment of its worshipers, if Jackson County enforces the plain words of the Plan.

ABUNDANT LIFE'S RESPONSE

60. Defendants’ plan was issued on May 6, 2020; on May 7, 2020, Plaintiff sent a demand letter to Defendants, showing that the rules were plainly discriminatory. Plaintiff’s letter (at Ex. 5) also explained that in order to communicate with members and the public about services on May 17, 2020, Abundant Life would need

to start communicating at the regular worship streaming time on Sunday, May 10, 2020.

61. Because May 8, 2020 is a State Holiday, Plaintiff asked that the Plan be amended no later than close of business May 7, 2020, or else Plaintiff would be forced to seek emergency relief so that it could give adequate notice and preparation to worshipers about May 17, 2020.
62. Defendants have declined to amend their Plan as of the time of filing.

THE UNITED STATES CONSTITUTION

63. The First Amendment to the United States Constitution provides: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

64. The Fourteenth Amendment to the U.S. Constitution provides: “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

THE MISSOURI CONSTITUTION

65. Article I, Section 5 of Missouri’s Constitution states, in part:

That all men and women have a natural and inalienable right to worship Almighty God according to the dictates of their own

consciences; that no human authority can control or interfere with the rights of conscience; that no person shall, on account of his or her religious persuasion or belief, be rendered ineligible to any public office or trust or profit in this state, ... or be molested in his or her person or estate; that to secure a citizen's right to acknowledge Almighty God according to the dictates of his or her own conscience, neither the state nor any of its political subdivisions shall establish any official religion, nor shall a citizen's right to pray or express his or her religious beliefs be infringed; that the state shall not coerce any person ... but shall ensure that any person shall have the right to pray individually or corporately in a private or public setting so long as such prayer does not result in disturbance of the peace or disruption of a public meeting or assembly ... but this section shall not be construed to ... excuse acts of licentiousness, nor to justify practices inconsistent with the good order, peace or safety of the state, or with the rights of others.

66. Missouri's Religious Freedom Restoration Act, §1.302, RSMo. states:
1. A governmental authority may not restrict a person's free exercise of religion, unless: (1) The restriction is in the form of a rule of general applicability, and does not discriminate against religion, or among religions; and (2) The governmental authority demonstrates that application of the restriction to the person is essential to further a compelling governmental interest, and is not unduly restrictive considering the relevant circumstances.
 2. As used in this section, "**exercise of religion**" shall be defined as an act or refusal to act that is substantially motivated by religious belief, whether or not the religious exercise is compulsory or central to a larger system of religious belief.
 3. As used in this section "**demonstrates**" means meets the burden of going forward with the evidence and of persuasion.

COUNT I
VIOLATION OF THE FIRST AMENDMENT OF THE UNITED STATES
CONSTITUTION
FREE EXERCISE OF RELIGION
(42 U.S.C. §1983)

67. Plaintiff incorporates by reference all preceding paragraphs.
68. The First Amendment of the United States Constitution commands that Congress must make no law "prohibiting the free exercise" of religion.

69. The First Amendment applies to state and local governments, including these defendants, by virtue of Fourteenth Amendment under the “incorporation doctrine.” *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).
70. The Free Exercise Clause binds local subdivisions of the state, such as Jackson County, by operation of the Fourteenth Amendment. *See, e.g. Lovell v. City of Griffin, Ga.*, 303 U.S. 444, 450 (1938).
71. As a county government or official agents thereof, Defendants must uphold and protect citizens’ First Amendment rights.
72. Defendants’ Plan, orders to effectuate the Plan, criteria, guidance, interpretations, policies and practices restricting religiously-motivated gatherings to ten persons substantially interferes with Plaintiff’s ability to carry out their religious doctrine, faith and mission.
73. Congress has provided for challenges to First Amendment violations by government actors. 42 U.S.C. §1983 creates a private right of action against any person who, under color of state law, deprives another of “rights, privileges, or immunities secured by the Constitution.” The private right of action includes “an action at law” and a “suit in equity.” *Id.*
74. Defendants’ Plan, orders to effectuate the Plan, criteria, guidance, interpretations, policies and practices restricting religiously-motivated gatherings to ten persons, while allowing commercially-motivated gathering of any size (subject to available square-footage) are not justified by a compelling government interest.
75. Defendant’s application of the Plan, orders to effectuate the Plan, criteria, guidance, interpretations, policies and practices to Abundant Life, its employees, and

its guests, is an unconstitutional deprivation of Plaintiff's First Amendment rights, including, but not limited to the Free Exercise of Religion, and to Due Process of law.

76. Defendants' Plan, orders to effectuate the Plan, criteria, guidance, interpretations, policies and practices violate the Free Exercise Clause of the First Amendment to the United States Constitution, both facially and as applied.

77. Even if Defendants can assert a compelling government interest in their limitations, the Defendants' interpretation, policies and practices are not narrowly tailored to achieve that interest.

78. Absent injunctive and declaratory relief against the Plan and Order and Defendants' interpretation, policies and practices, the Plaintiff Abundant Life has been and will continue to be harmed.

COUNT II
VIOLATION OF FIRST AMENDMENT TO THE UNITED STATES
CONSTITUTION
FREE SPEECH
(FACIAL AND AS APPLIED CHALLENGE)
(42 U.S.C. §1983)

79. Plaintiff incorporates by reference all preceding paragraphs.

80. Defendants' Plan, orders to effectuate the Plan, criteria, guidance, interpretations, policies and practices single out certain religious activity for less favorable treatment than other, similarly situated, non-religious activities.

81. Defendants have stated that they intend for public pressure to constitute part of the enforcement of the Plan, and so one purpose of by the Plan is to subject "violators" to public shame, ridicule, and other reputational damage, which would have a chilling effect on the targeted speech, including Plaintiff's speech.

82. No set of circumstances allows Defendant to single out religious activity for less favorable treatment than other, similarly situated non-religious activities.

83. Defendants' Plan, orders to effectuate the Plan criteria, guidance, interpretations, policies and practices appear to give government officials unbridled discretion with respect to enforcement of the Order and the imposition of penalties, and to determine whether gatherings and activities are to be classified as "retail" or "church" activities, making the Plan susceptible to both content and viewpoint-based discrimination.

84. Prohibiting or punishing Plaintiff's religiously-motivated speech does not serve any legitimate, rational, substantial, or compelling governmental interest.

85. Defendants' categories are not even rationally related to the claimed purposes, in that the definitions of "church" and the restrictions applied to churches appear to rest on prejudicial or stereotyped understandings of religious services, and not on the actual safety of the facility or activities within those facilities.

86. Defendants have substantially burdened or deprived (and continue to deprive) Plaintiff, its guests, members, and employees of the Free Speech as secured by the First Amendment.

87. Defendants can use alternative, less restrictive means to achieve any interest that it might have.

88. Defendants' Plan, orders to effectuate the Plan, criteria, guidance, interpretations, policies and practices violate the Free Speech Clause of the First Amendment to the United States Constitution, both facially and as applied.

89. In the absence of declaratory and injunctive relief, Plaintiff will be irreparably harmed.

COUNT III
VIOLATION OF FIRST AMENDMENT OF THE UNITED STATES
CONSTITUTION
FREEDOM OF ASSEMBLY AND ASSOCIATION
(42 U.S.C. §1983)

90. Plaintiff incorporates by reference all preceding paragraphs.
91. The First Amendment to the United States Constitution commands that Congress shall make no law “abridging...the right of the people peaceably to assemble....”
92. The rights to assemble and associate are a fundamental right, applicable to the states by incorporation by the Fourteenth Amendment.
93. The rights of assembly and association exists throughout the community, in public and private spaces.
94. The Defendant’s orders, criteria, guidance and policies burden and interfere with Plaintiff’s right to assemble and associate with its employees and guests.

COUNT IV
VIOLATION OF FIRST AMENDMENT OF THE UNITED STATES
CONSTITUTION
ESTABLISHMENT CLAUSE
(42 U.S.C. §1983)

95. Plaintiff incorporates by reference all preceding paragraphs.
96. The First Amendment to the United States Constitution commands that Congress shall make no law “respecting an establishment of religion....”
97. The Establishment Clause prohibits government from enacting or enforcing laws in a manner that advances or inhibits religion, or that intentionally discriminates against religion or discriminates between religions.

98. Defendants' interpretation, policies and practices target religious activity and inhibit religious activity.

99. Defendants' interpretation, policies and practices have demonstrated bias or hostility against the religious ministry of Plaintiff and have violated the Plaintiff's rights under the Establishment Clause.

COUNT V
RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT
SUBSTANTIAL BURDEN PROVISION
(42 U.S.C. §2000cc)

100. Plaintiff incorporates by reference all preceding paragraphs.

101. The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), prevents the government from imposing a substantial burden on the sincere religious belief of a religious assembly or institution unless the government demonstrates that the burden "is in furtherance of a compelling governmental interest" and "is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. §2000cc(a)(1).

102. RLUIPA applies whenever (1) the substantial burden "is imposed in a program or activity that receives Federal financial assistance"; (2) the substantial burden "affects, or removal of that substantial burden would affect, commerce...among the several States"; or (3) the substantial burden is "imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses of the property involved." 42 U.S.C. §2000cc(a)(2).

103. The Plan, orders to effectuate the Plan, criteria, guidance, interpretations, policies and practices of the Defendants constitute the imposition or implementation of a land use regulation that imposes a substantial burden on the Plaintiff's religious exercise; a burden not in furtherance of a compelling governmental interest or the least restrictive means of furthering such interest, in violation of RLUIPA, 42 U.S.C. §2000cc(a)(1).

104. Defendants have made or will make individualized assessments concerning Plaintiff's use of its land under the relevant orders, plans, and guidance, in that Defendants have created categorized acceptable uses of individual property, and categorized particular uses as "essential," or "non-essential," or "retail" or "large gatherings and social events."

105. On April 22, 2020, Defendant Jackson County received funds in the Amount of \$122,669,998.30 from the federal government pursuant to Coronavirus Aid, Relief, and Economic Security Act (Pub. L. 116-136), which is to be spent, in part, in funding Defendants' response to the Coronavirus emergency.

106. Defendants' restrictions impose a substantial burden Plaintiff's religious exercise, which affects commerce "among the several States" with respect to the Plaintiff's ability to gather persons for worship, religious activity, to collect donations and to distribute aid to the needy.

107. The County's implementation of a land use regulation under which the County does or will involve individualized assessments concerning the Plaintiff's use of property in Jackson County, Missouri.

108. Defendants' restrictions impose a substantial burden on the Plaintiff's religious exercise, which affects commerce "among the several States" with respect to the

Plaintiff's ability to gather persons for worship, and religious activity, to collect donations; and to distribute aid to because this case arises out of the needy.

109. Because the County receives federal financial assistance; because the imposition of the substantial burden on the Plaintiff's religious exercise affects commerce "among the several States" with respect to the Plaintiff's ability to gather persons for worship and religious activity; and because this case arises out of the County's implementation of a land use regulation under which the County made individualized assessments concerning the Plaintiff's use of the property in Jackson County, Missouri, RLUIPA's terms are binding in this case.

110. Defendants have deprived and continue to deprive the Plaintiff of its right to the free exercise of religion, as secured by the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §2000cc (RLUIPA).

111. Defendants are officials for and within Jackson County, with the authority to enforce State and local laws concerning the use of land and structures within its border, and thus are acting under color of state law.

112. For purposes of RLUIPA, Defendants are a "government." 42 U.S.C. §2000cc-5(4)(A)(i),(ii).

113. For purposes of RLUIPA, the Plaintiff is a "religious assembly or institution." 42 U.S.C. §2000cc(2)(b)(1).

114. For purposes of RLUIPA, the Plan, orders to effectuate the Plan, criteria, guidance, interpretations, policies and practices constitute a land use regulation under which a government makes, or has in place formal in informal procedures or practices that permit the government to make individualized assessments of the owner's use of the property involved, and is tied to building codes and fire codes.

115. The Plaintiff's religious exercise includes:

- A. Worship services of the Almighty God in a gathered assembly;
- B. The offering and provision of ministry to members and the public;
- C. The collection and distribution of funds to further religious and charitable purposes;
- D. The offering and provision of food and assistance to persons who are food insecure.
- E. The offering and provision of help to persons who are in poverty or in danger of being in poverty.
- F. The employment of persons consistent with the beliefs and activities of Plaintiff.
- G. The use of its employees and its property to offer and provide physical and spiritual help, including, without limitation, preaching, corporate prayer, and other worship.

116. Under the County's Plan, orders to effectuate the Plan, criteria, guidance, interpretations, policies and practices, the Plaintiff's religious exercise has been burdened, in that:

- A. It has been forced to cancel or turn away persons from corporate worship services of the Almighty God;
- B. It has been forced to reduce ministry to members and the public, or been required to use less effective methods such as internet streaming or drive-in services, which as a matter of faith are not adequate substitutes for in-person corporate worship;

- C. It has been unable to operate or employ staff consistent with the beliefs and activities of Plaintiff.
 - D. It has been unable to use its employees and its property to offer and provide physical and spiritual help, including, without limitation, preaching, corporate prayer, and other worship.
117. Defendants' actions thus violate the Plaintiff's rights as secured by RLUIPA.

COUNT VI
RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT
EQUAL TERMS PROVISION
(42 U.S.C. §2000cc)

118. Plaintiff incorporates by reference all preceding paragraphs.
119. RLUIPA provides, in part: "No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." 42 U.S.C. §2000cc(b)(1).
120. Defendants have not applied the same interpretations, policies, or practices concerning "large gatherings and social events" to retail businesses, bars and restaurants that, in fact, are large gatherings of customers for commercial purposes.
121. Defendants have implemented Plan, orders to effectuate the Plan, criteria, guidance, interpretations, policies or practices as a land use regulation in a manner that treats Plaintiff on less than equal terms with nonreligious institutions such as retail businesses, restaurants and bars.
122. Defendants' Plan, orders to effectuate the Plan, criteria, guidance, interpretations, policies and practices threaten harm, have harmed, and will continue to cause harm to Plaintiff.

COUNT VII
RLUIPA
UNREASONABLE LIMITATIONS PROVISION
(42 U.S.C. §2000cc)

123. Plaintiff incorporates by reference all preceding paragraphs.

124. RLUIPA provides, in part: “No government shall impose or implement a land use regulation that... (B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.” 42 U.S.C. §2000cc(b)(3)(B).

125. Defendants’ Plan, orders, criteria, guidance, interpretations, policies and practices as applied to Plaintiff operate as a land use regulation, and constitute an unreasonable limitation on the religious assembly and worship rights of Plaintiff; in particular because the orders result in wildly inconsistent limits on churches in different parts of the same County for no legitimate reason.

COUNT VIII
MISSOURI RELIGIOUS FREEDOM RESTORATION ACT
(§1.302, RSMo.)

126. Plaintiff incorporates by reference all preceding paragraphs.

127. §1.302, RSMo., (commonly known as Missouri’s Religious Freedom Restoration Act) states:

A governmental authority may not restrict a person’s free exercise of religion, unless:

1. The restriction is in the form of a rule of general applicability, and does not discriminate against religion, or among religions; and

2. The governmental authority demonstrates that application of the restriction to the person is essential to further a compelling governmental interest, and is not unduly restrictive considering the relevant circumstances.

128. Thus Missouri's RFRA addresses all governmental burdens on free exercise, and not merely substantial burdens on free exercise.

129. The activities of Plaintiff in holding corporate worship and prayer services are actions substantially motivated by its religious belief.

130. Defendants' Plan, orders to effectuate the Phase I Plan, criteria, guidance, interpretations, policies and practices, restrict the Free Exercise of Religion of Plaintiff, its employees, and its guests.

131. Defendants' Plan, orders to effectuate the Plan, criteria, guidance, interpretations, policies and practices restricting religiously-motivated gatherings to ten persons are not rules of general applicability, and discriminate against religion, or among religious groups elsewhere in the County, and among religious groups that believe meeting in person is a religious requirement.

132. Defendants' policy Plan, orders, criteria, guidance, interpretations, policies and practices, restrict the Free Exercise of Religion of Plaintiff, its employees, and its guests.

133. Defendant's restrictions are not essential to any compelling governmental interests, as demonstrated by the relaxed criteria and exceptions allowed to Retail Sales, Personal Services, Restaurants and Bars under the Plan.

134. Defendant's restrictions are unduly restrictive considering the relevant circumstances, including public safety.

135. As a direct result of Defendants' actions, Plaintiff has suffered harm from the deprivation of its right to religious exercise free from interference guaranteed by law.

COUNT IX
VIOLATION OF MISSOURI CONSTITUTION
(ARTICLE I, SECTIONS 2, 5, 9 & 10)

136. Plaintiff incorporates by reference all preceding paragraphs.

137. **Article I, §2** of the Missouri Constitution provides:

That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural **right to life, liberty**, the pursuit of happiness and the enjoyment of the gains of their own industry; that all persons are created equal and are entitled to **equal rights and opportunity under the law**; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design. (emphasis added)

138. **Article I, §5** of Missouri's Constitution provides, in part:

That all men and women have a **natural and inalienable right to worship** Almighty God according to the dictates of their own consciences; that no human authority can control or interfere with the **rights of conscience** ... that the state shall not coerce any person to participate in any prayer or other religious activity, but shall ensure that any person shall have the **right to pray individually or corporately in a private or public setting** so long as such prayer does not result in disturbance of the peace or disruption of a public meeting or assembly.... (emphasis added)

139. **Article I, §9** of the Missouri Constitution provides:

That the people have the **right peaceably to assemble for their common good**, and to apply to those invested with the powers of government for redress of grievances by petition or remonstrance. (emphasis added)

140. **Article I, §10** of the Missouri Constitution provides: “That no person shall be deprived of life, liberty or property without **due process** of law.”

141. Plaintiff, its guests, and its employees exercise the constitutional rights protected by the foregoing sections of the Missouri Constitution, including the right to corporate worship and prayer on its private property; the right to worship God according to dictates of conscience, the right peaceably to assemble for the common good, the right to liberty, the right to due process, the right to equal protection, and other rights contained in the Missouri Constitution Bill of Rights.

142. Defendants’ Plan, orders, criteria, guidance, interpretations, policies and practices interpretations, policies and practices under the Plan have coerced, interfered with and substantially burdened the exercise of the foregoing rights by Plaintiff Abundant Life.

143. At all times mentioned herein, Plaintiff Abundant Life and its employees have sought to engage in such activities on the subject premises without any disturbance of the peace or disruption of any public meeting or assembly, or interference with the rights of others.

PRAYER FOR RELIEF

144. Plaintiff seeks a declaratory judgment in its favor and against all Defendants on all Counts, as follows:

- A. Declare that the Plaintiff's corporate worship services are a religious exercise.
- B. Declare Defendant's Plan, orders to effectuate the Plan, criteria, guidance, interpretations, policies and practices are facially unconstitutional in that they single out religious activity for disparate and unfair treatment.
- C. Declare Defendant's Plan, orders to effectuate the Plan, criteria, guidance, interpretations, policies and practices are unconstitutional as applied to Plaintiff, its employees, and guests, in violation of the First and Fourteenth Amendments of the U.S. Constitution, under the circumstances herein described.
- D. Declare Defendant's Phase I Plan, orders to effectuate the Plan, criteria, guidance, interpretations, and policies violate RLUIPA, including the provisions for substantial burden, discrimination, equal terms, or unreasonable limitations.
- E. Declare Defendant's Phase I Plan, orders to effectuate the Plan, criteria, guidance, interpretations, and policies, violate Missouri's RFRA.
- F. Declare Defendant's Phase I Plan, orders to effectuate the Plan, criteria, guidance, interpretations, and policies violate the Missouri Constitution, Article I, Sections 2, 5, 9, and 10.

G. Declare Defendant's Phase I Plan, orders to effectuate the Plan, criteria, guidance, interpretations, and policies violate Missouri's Religious Freedom Restoration Act, §1.302, *et seq.*

145. Upon proper motion, Plaintiff seeks a temporary restraining order, a preliminary injunction and a permanent injunction in favor of Plaintiff and against all Defendants, which:

- A. Enjoin Defendants from enforcing or threatening to enforce Defendant's Plan, orders to effectuate the Plan, criteria, guidance, interpretations, and policies, against Plaintiff or any others similarly situated, on grounds that the Plan violates the U.S. Constitution, the Missouri Constitution, and state or federal law.
- B. Enjoin Defendants from enforcing or threatening to enforce Defendant's Plan, orders to effectuate the Plan, criteria, guidance, interpretations, and policies against Plaintiff, its employees or guests, while they are present on Plaintiff's premises and are engaged in work, religious worship, teaching or assembly, seeking ministry help from Plaintiff, or any other religious purpose.
- C. Enjoin Defendants from imposing a substantial burden on religious exercise, unequal terms, discrimination, or unreasonable limitations on the religious exercise of the Plaintiff, its employees, and its members or guests, that are not essential to further a compelling governmental interest; and
 - 1. Require Defendants, their officers, employees, agents, successors, and all other persons in concert or participation with them, to take such actions as may be necessary to

restore, as nearly as practicable, the Plaintiff to the position it would have been in but for the Defendants' unlawful conduct; and

2. Require Defendants, their officers, employees, agents, successors and all other persons acting in concert or participation with them, to take such actions as may be necessary to prevent the recurrence of such unlawful conduct in the future, including but not limited to, providing RLUIPA and RFRA training to Defendants' personnel, establishing procedures to address complaints of RLUIPA and RFRA violations, and maintaining records and submitting reports relating to RLUIPA and RFRA compliance.

146. Plaintiff seeks an Order that all Defendants pay to Plaintiff reasonable attorneys' fees and costs pursuant to 42 U.S.C. §1988 and the attorney fee provision of the Religious Land Use and Institutionalized Persons Act of 2000.

147. Plaintiff seeks an award of \$1 for nominal damages for violation of its constitutional rights and prays that the Court issue the requested injunctive relief without a condition of bond or other security being required of Plaintiff.

148. Plaintiff seeks an Order for such other relief as the Court deems just and equitable in these premises.

JURY DEMAND

Plaintiff requests a trial by jury on all issues so triable.

Respectfully submitted,

**LAW OFFICES OF JONATHAN R.
WHITEHEAD, LLC**

/s/ Jonathan R. Whitehead
Jonathan R. Whitehead, Mo. 56848
229 S.E. Douglas St., Ste. 210
Lee's Summit, Mo 64063
816.398.8305 - Phone
816.278.9131 - Fax
Jon@WhiteheadLawLLC.com
**ATTORNEY FOR PLAINTIFF
ABUNDANT LIFE BAPTIST
CHURCH OF LEE'S SUMMIT,
MISSOURI**

VERIFICATION

**I DECLARE UNDER PENALTY OF PERJURY THAT THE
FOREGOING VERIFIED COMPLAINT HAS BEEN EXAMINED BY ME
AND THAT THE FACTUAL ALLEGATIONS THEREIN ARE TRUE TO THE**

BEST OF MY INFORMATION, KNOWLEDGE AND BELIEF.

A handwritten signature in cursive script that reads "Phil Hopper". The signature is written in dark ink and is positioned above a horizontal line.

**PHIL HOPPER, PASTOR,
ABUNDANT LIFE BAPTIST CHURCH
OF LEE'S SUMMIT, MISSOURI**

DATE: 5/7/2020

APR 17 2020

JACKSON COUNTY, MISSOURIMARY JO SPINO
COUNTY CLERK9:30 AM
RCR

OFFICE OF THE COUNTY EXECUTIVE
415 E. 12th St., Ste. 200, Kansas City, MO 64106
JACKSON COUNTY HEALTH DEPARTMENT
313 S. Liberty, Independence, MO 64050

AMENDED STAY AT HOME ORDER OF JACKSON COUNTY EXECUTIVE FRANK WHITE, JR., JACKSON COUNTY HEALTH DIRECTOR BRIDGETTE SHAFFER, AND JACKSON COUNTY EMERGENCY MANAGEMENT COORDINATOR TROY M. SCHULTE DIRECTING ALL INDIVIDUALS LIVING IN JACKSON COUNTY, MISSOURI, EXCEPT KANSAS CITY, MISSOURI, TO STAY AT HOME AT THEIR PLACE OF RESIDENCE EXCEPT THAT THEY MAY LEAVE TO PROVIDE OR RECEIVE CERTAIN ESSENTIAL SERVICES OR ENGAGE IN CERTAIN ESSENTIAL ACTIVITIES AND WORK FOR ESSENTIAL BUSINESSES AND GOVERNMENTAL SERVICES; EXEMPTING INDIVIDUALS EXPERIENCING HOMELESSNESS FROM THE STAY AT HOME ORDER BUT URGING THEM TO FIND SHELTER AND GOVERNMENT AGENCIES TO PROVIDE IT; DIRECTING ALL BUSINESSES AND GOVERNMENTAL AGENCIES TO CEASE NON- ESSENTIAL OPERATIONS AT PHYSICAL LOCATIONS IN THE COUNTY; PROHIBITING ALL NON-ESSENTIAL GATHERINGS OF ANY NUMBER OF INDIVIDUALS.

DATE OF AMENDED STAY AT HOME ORDER: APRIL 16, 2020

Please read this Order carefully. Pursuant to §192.300 R.S.Mo. and §192.320 R.S.Mo., violation of or failure to comply with this Order is a class A misdemeanor punishable by fine, imprisonment, or both.

UNDER THE AUTHORITY GRANTED INDIVIDUALLY AND COLLECTIVELY BY THE RELEVANT PROVISIONS OF THE MISSOURI STATE CONSTITUTION, STATUTES, REGULATIONS, AS WELL AS BY RELEVANT PROVISIONS OF THE HOME RULE CHARTER OF JACKSON COUNTY AND COUNTY CODE PROVISIONS, INCLUDING, BUT NOT LIMITED TO: THE MISSOURI CODE OF STATE REGULATIONS, RULES OF DEPARTMENT OF HEALTH AND SENIOR SERVICES (19 CSR 20-20.020; 19 CSR 20-20.030; 19 CSR 20-20.040; 19 CSR 20-20.050) AND JACKSON COUNTY CODE CHAPTER 40, THE JACKSON COUNTY EXECUTIVE, JACKSON COUNTY HEALTH DIRECTOR, AND JACKSON COUNTY EMERGENCY MANAGEMENT COORDINATOR DO HEREBY ORDER:

1. This Order supersedes the March 24, 2020 Order directing all individuals to stay at home ("Stay at Home Order"). This Order clarifies, strengthens, and extends certain terms of the Stay at Home Order to increase social distancing and reduce person-to-person contact in order to further slow transmission of Novel Coronavirus Disease 2019 ("COVID-19"). As of the effective date and time of this Order set forth in Section 17 below, all

individuals, businesses, and government agencies in Jackson County, Missouri, excluding Kansas City, Missouri, are required to follow the provisions of this Order.

2. The intent of this Order is to ensure that the maximum number of people shelter in their places of residence to the maximum extent feasible to slow the spread of COVID-19 and mitigate the impact on delivery of critical healthcare services to those in need. All provisions of this Order must be interpreted to effectuate this intent. Failure to comply with any of the provisions of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both.
3. All individuals currently living within the County are ordered to stay at home at their place of residence. They may leave their residence only for Essential Activities, Essential Governmental Functions, Essential Travel, to work for Essential Businesses, or to perform Minimum Basic Operations for non-essential businesses, all as defined in Section 14. Individuals experiencing homelessness are exempt from this Section, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to, as soon as possible, make such shelter available and provide handwashing or hand sanitation facilities to persons who continue experiencing homelessness.
4. When people need to leave their place of residence for the limited purposes allowed in this Order, they must strictly comply with Social Distancing Requirements as defined in Section 14.k, except as expressly provided in this Order.
5. All businesses with a facility in the County, except Essential Businesses, as defined in Section 14.f, are required to cease all activities at facilities located within the County except Minimum Basic Operations, as defined in Section 14.g. For clarity, all businesses may continue operations consisting exclusively of owners, employees, volunteers, or contractors performing activities at their own residences (i.e., working from home). All Essential Businesses are strongly encouraged to remain open. But Essential Businesses are directed to maximize the number of employees who work from home. Essential Businesses may only assign those employees who cannot perform their job duties from home to work outside the home. All Essential Businesses shall prepare, post, and implement a Social Distancing Protocol at each of their facilities at which they are maintaining operations, as specified in Section 14.h.
6. Businesses that include an Essential Business component at their facilities alongside non-essential components must, to the extent feasible, scale down their operations to the Essential Business component only. Scaling must be observed as follows:
 1. Twenty-five (25) percent or less of the entity's authorized fire or building code occupancy, as set by local authorities, for a retail location with square footage of less than ten thousand square feet (10,000 ft²);

2. Ten (10) percent or less of the entity's authorized fire or building code occupancy, as set by local authorities, for a retail location with square footage of ten thousand square feet (10,000 ft²) or more.
7. All public and private gatherings of any number of people occurring outside a single household or living unit are prohibited, except for the limited purposes expressly permitted in this Order. Nothing in this Order prohibits members of a single household or living unit from engaging in Essential Travel or Essential Activities together.
8. All travel, including, but not limited to, travel on foot, bicycle, scooter, motorcycle, automobile, or public transit, except Essential Travel, as defined below in Section 14.i, is prohibited. People may use public transit only for purposes of performing Essential Activities or to travel to and from work to operate Essential Businesses, maintain Essential Governmental Functions, or to perform Minimum Basic Operations at non-essential businesses. Transit agencies and people riding on public transit must comply with Social Distancing Requirements, as defined in Section 14.k, to the greatest extent feasible. This Order allows travel into or out of the County only to perform Essential Activities, operate Essential Businesses, maintain Essential Governmental Functions, or perform Minimum Basic Operations at non-essential businesses.
9. This Order is issued based on evidence of increasing occurrence of COVID-19 within the County and throughout the Kansas City Metropolitan Area, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, and evidence that the age, condition, and health of a significant portion of the population of the County places it at risk for serious health complications, including death, from COVID-19. Due to the outbreak of the COVID-19 disease in the general public, which is now a pandemic according to the World Health Organization, there is a public health emergency throughout the County. Making the problem worse, some individuals who contract the virus causing the COVID-19 disease have no symptoms or have mild symptoms, which means they may not be aware they carry the virus and are transmitting it to others. Because even people without symptoms can transmit the infection, and because evidence shows the infection is easily spread, gatherings and other interpersonal interactions can result in preventable transmission of the virus. The scientific evidence shows that at this stage of the emergency, it remains essential to continue to slow virus transmission as much as possible to protect the most vulnerable, to prevent the health care system from being overwhelmed, and to prevent deaths. Reinforcement of the Stay at Home Order and strengthening of its restrictions are necessary to further reduce the spread of the COVID-19 disease, preserving critical and limited healthcare capacity in the County and advancing toward a point in the public health emergency where transmission can be controlled.
10. This Order is also issued in light of the existence, as of April 15, 2020, of 247 cases of COVID-19 cases in Jackson County, with 11 deaths. It is likely there will be further significant and increasing numbers of suspected cases of community transmission and

further significant increases in transmission. This Order is necessary to slow the rate of spread, and the Health Director will re-evaluate it as further data becomes available.

11. This Order is issued in accordance with, and incorporates by reference, all prior Orders issued by Governor Mike Parson, as well as Jackson County Executive Frank White, Jr.
12. This Order is issued in light of belief that the Stay at Home Order is generally effective in increasing social distancing, but that at this time additional restrictions are necessary to further mitigate the rate of transmission of COVID-19, to prevent the health care system from being overwhelmed, and prevent death. This Order comes after the release of substantial guidance from the Jackson County Health Director, the Centers for Disease Control and Prevention, the Missouri Department of Health and Senior Services, and other public health officials throughout the United States and around the world, including an increasing number of orders imposing similar social distancing requirements and mobility restrictions to combat the spread and harms of COVID-19. The County Executive, Health Director, and Emergency Management Coordinator will continue to assess the quickly evolving situation and may modify or extend this Order, or issue additional Orders, related to COVID-19, as changing circumstances dictate.
13. This Order adopts in certain respects more stringent restrictions addressing the particular facts and circumstances in the County, which are necessary to control the public health emergency as it is evolving within the County and the Kansas City Metropolitan Area. Without this tailored set of restrictions that further reduces the number of interactions between persons, there is potential that the public health crisis in the County could worsen to the point at which it may overtake available health care resources within the County and increase the death rate. Also, this Order enumerates additional restrictions on non-work-related travel not covered by the State Shelter Order, including limiting such travel to performance of Essential Travel or Essential Activities; sets forth mandatory Social Distancing Requirements for all individuals in the County when engaged in activities outside their residences; and adds a mechanism to ensure that Essential Businesses comply with the Social Distancing Requirements. Where a conflict exists between this Order and any state public health order related to the COVID-19 pandemic, the most restrictive provision controls.
14. Definitions and Exemptions.
 - a. For the purposes of this Order, individuals may leave their residence only to perform the following “Essential Activities.” But people at high risk of severe illness from COVID-19 and people who are sick are strongly urged to stay in their residence to the extent possible, except as necessary to seek or provide medical care or Essential Governmental Functions. Essential Activities are:
 - i. To engage in activities or perform tasks important to their health and safety, or to the health and safety of their family or household members (including pets), such as, by way of example only and without limitation,

obtaining medical supplies or medication, or visiting a health care professional.

- ii. To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products, products needed to work from home, or products necessary to maintain the habitability, sanitation, and operation of residences.
- iii. To engage in outdoor recreation activity, including, by way of example and without limitation, walking, hiking, bicycling, and running, in compliance with Social Distancing Requirements and with the following limitations:
 - A. Outdoor recreation activity at parks, beaches, and other open spaces must be in conformance with any restrictions on access and use established by the Health Director, government, or other entity that manages such area to reduce crowding and risk of transmission of COVID-19. Such restrictions may include, but are not limited to, restricting the number of entrants, closing the area to vehicular access and parking, or closure to all public access;
 - B. Use of recreational areas with high-touch equipment or that encourage gathering, including, but not limited to, playgrounds, outdoor gym equipment, picnic areas, dog parks, and barbecue areas, is prohibited outside of residences, and all such areas shall be closed to public access including by signage and, as appropriate, by physical barriers;
 - C. Use of shared facilities for recreational activities outside of residences, including, but not limited to, tennis and pickle ball courts, rock parks, climbing walls, public use pools, spas, gyms, disc golf, and basketball courts is prohibited and those areas must be closed for recreational purposes, including by signage and, as appropriate, by physical barriers. Such facilities may be repurposed during the emergency to provide essential services needed to address the COVID-19 pandemic; and
- iv. To perform work for an Essential Business or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations, as defined in this Section.
- v. To provide necessary care for a family member or pet in another household who has no other source of care.

- vi. To attend a funeral with fewer than 10 individuals present.
- b. For the purposes of this Order, individuals may leave their residence to work for, volunteer at, or obtain services at “Healthcare Operations,” including, without limitation, hospitals, clinics, COVID-19 testing locations, dentists, pharmacies, blood banks and blood drives, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, or any related and/or ancillary healthcare services. “Healthcare Operations” also includes veterinary care and all healthcare services provided to animals. This exemption for Healthcare Operations shall be construed broadly to avoid any interference with the delivery of healthcare, broadly defined. “Healthcare Operations” excludes fitness and exercise gyms and similar facilities.
- c. For the purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to the operation and maintenance of “Essential Infrastructure,” including airports, utilities (including water, sewer, gas, and electrical), oil refining, roads and highways, public transportation, solid waste facilities (including collection, removal, disposal, and processing facilities), cemeteries, mortuaries, crematoriums, and telecommunications systems (including the provision of essential global, national, and local infrastructure for internet, computing services, business infrastructure, communications, and web-based services).
- d. For the purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, and law enforcement personnel, and others who need to perform essential services are categorically exempt from this Order to the extent they are performing those essential services. Further, nothing in this Order shall prohibit any individual from performing or accessing “Essential Governmental Functions,” as determined by the governmental entity performing those functions in the County. Each governmental entity shall identify and designate appropriate employees, volunteers, or contractors to continue providing and carrying out any Essential Governmental Functions, including the hiring or retention of new employees or contractors to perform such functions.
- e. For the purposes of this Order, a “business” includes any for-profit, non-profit, or educational entity, whether a corporate entity, organization, partnership or sole proprietorship, and regardless of the nature of the service, the function it performs, or its corporate or entity structure.
- f. For the purposes of this Order, “Essential Businesses” are:
 - i. Healthcare Operations;
 - ii. Businesses that operate, maintain, or repair Essential Infrastructure;

- iii. Grocery stores, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of unprepared food, canned food, dry goods, non-alcoholic beverages, alcoholic beverages, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, as well as hygienic products and household consumer products necessary for personal hygiene or the habitability, sanitation, or operation of residences. The businesses included in this subparagraph (ii) include establishments that sell multiple categories of products provided that they sell a majority of essential products identified in this subparagraph.
- iv. Food cultivation, including farming, livestock, and fishing;
- v. Businesses that provide food, shelter, clothing and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;
- vi. Construction, but only of the types listed in this subparagraph below:
 - A. Projects immediately necessary to the maintenance, operation, or repair of Essential Public Infrastructure;
 - B. Projects associated with Healthcare Operations, including creating or expanding Healthcare Operations, provided that such construction is directly related to the COVID-19 response;
 - C. Affordable housing that is or will be income-restricted, including multi-unit or mixed-use developments containing at least 10% income-restricted units;
 - D. Shelters and temporary housing, but not including hotels or motels;
 - E. Projects immediately necessary to provide critical non-commercial services to individuals experiencing homelessness, elderly persons, persons who are economically disadvantaged, and persons with special needs;
 - F. Construction necessary to ensure that existing construction sites that must be shut down under this Order are left in a safe and secure manner, but only to the extent necessary to do so; and
 - G. Construction or repair necessary to ensure that residences and buildings containing Essential Businesses are safe, sanitary, or habitable to the extent such construction or repair cannot reasonably be delayed;
- vii. Newspapers, television, radio, and other media services;
- viii. Gas stations and auto-supply, auto-repair (including, but not limited to, for cars, trucks, motorcycles and motorized scooters), and automotive

dealerships. This subparagraph (vii) does not restrict the online purchase of automobiles if they are delivered to a residence or Essential Business;

- ix. Bicycle repair and supply shops;
- x. Banks and related financial institutions;
- xi. Service providers that enable residential transactions (including rentals, leases, and home sales), including, but not limited to, real estate agents, escrow agents, notaries, and title companies. Open house showings are prohibited under this order.
- xii. Estate and garage sales, as well as auctions, are prohibited under this order.
- xiii. Hardware stores, provided that Social Distancing Requirements are observed in accordance with the state rules;
- xiv. Plumbers, electricians, lawn care, exterminators, and other service providers who provide services that are necessary to maintaining the habitability, sanitation, and operation of residences and Essential Businesses, but not for cosmetic or other purposes;
- xv. Arborists, landscapers, gardeners, and similar service professionals, but only to the limited extent necessary to maintain the habitability, sanitation, operation of businesses or residences, or the safety of residents, employees, or the public (such as fire safety or tree trimming to prevent a dangerous condition);
- xvi. Businesses providing mailing and shipping services, including post office boxes;
- xvii. Laundromats, drycleaners, and laundry service providers;
- xviii. Restaurants and other facilities that prepare and serve food, but only for delivery, drive-thru, curbside pickup, or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and take-away or delivery basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site;
- xix. Funeral home providers, mortuaries, cemeteries, and crematoriums, to the extent necessary for the transport, preparation, or processing of bodies or remains;
- xx. Businesses, to the extent feasible, that supply other Essential Businesses with the support or supplies necessary to operate, but only to the extent

that they support or supply these Essential Businesses. This exemption shall not be used as a basis for engaging in sales to the general public from retail storefronts;

- xxi. Businesses that have the primary function of shipping or delivering groceries, food, or necessary goods such as hygienic products directly to residences or businesses. This exemption shall not be used to allow for manufacturing or assembly of non-essential products or for other functions besides those necessary to the delivery operation;
- xxii. Airlines, taxis, rental car companies, rideshare services (including shared bicycles and scooters), and other private transportation providers providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order;
- xxiii. Home-based care for seniors, adults, children, and pets;
- xxiv. Residential facilities and shelters for seniors, adults, and children;
- xxv. Professional services, such as legal, notary, or accounting services, when necessary to assist in compliance with non-elective, legally required activities;
- xxvi. Services to assist individuals in finding employment with Essential Businesses;
- xxvii. Moving services that facilitate residential or commercial moves that are allowed under this Order;
- xxviii. Childcare facilities providing services that enable owners, employees, volunteers, and contractors for Essential Businesses, Essential Governmental Functions, or Minimum Basic Operations to work as allowed under this Order. Children of owners, employees, volunteers, and contractors who are not exempt under this Order may not attend childcare facilities. To the extent possible, childcare facilities must operate under the following conditions:
 - A. Childcare must be carried out in stable groups of 10 or fewer (“stable” means that the same 10 or fewer children are in the same group each day).
 - B. Children shall not change from one group to another in the same day.
 - C. If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix with each other.

- D. Childcare providers shall remain solely with one group of children in the same day.
- g. For the purposes of this Order, “Minimum Basic Operations” means the following activities for businesses, provided that owners, employees, and contractors comply with Social Distancing Requirements as defined this Section, to the extent possible, while carrying out such operations:
- i. The minimum necessary activities to maintain and protect the value of the business’s inventory and facilities; ensure security, safety, and sanitation; process payroll and employee benefits; provide for the delivery of existing inventory directly to residences or businesses; and related functions.
 - ii. The minimum necessary activities to facilitate owners, employees, and contractors of the business being able to continue to work remotely from their residences, and to ensure that the business can deliver its service remotely.
- h. For the purposes of this Order, all Essential Businesses must prepare and post by no later than 11:59 p.m. on April 20, 2020, a “Social Distancing Protocol” for each of their facilities in the County frequented by the public or employees. The Social Distancing Protocol must be substantially in accordance with the recommendations of the Centers for Disease Control and Prevention, and must include a list of what essential items the business is producing, manufacturing, or selling. The Social Distancing Protocol must be posted at or near the entrance of the relevant facility, and shall be easily viewable by the public and employees. A copy of the Social Distancing Protocol must also be provided to each employee performing work at the facility. All Essential Businesses shall implement the Social Distancing Protocol and provide evidence of its implementation to any authority enforcing this Order upon demand. The Social Distancing Protocol must explain how the business is achieving the following, as applicable:
- i. Limiting the number of people who can enter into the facility at any one time to ensure that people in the facility can easily maintain a minimum six-foot distance from one another at all times, except as required to complete the Essential Business activity;
 - ii. Where lines may form at a facility, marking six-foot increments at a minimum, establishing where individuals should stand to maintain adequate social distancing;
 - iii. Providing hand sanitizer, soap and water, or effective disinfectant at or near the entrance of the facility and in other appropriate areas for use by the public and employees, and in locations where there is high-frequency employee interaction with members of the public (e.g. cashiers);

- iv. Providing for contactless payment systems or, if not feasible to do so, the providing for disinfecting all payment portals, pens, and styluses after each use;
 - v. Regularly disinfecting other high-touch surfaces; and
 - vi. Posting a sign at the entrance of the facility informing all employees and customers that they should: avoid entering the facility if they have a cough or fever; maintain a minimum six-foot distance from one another; sneeze and cough into one's elbow; not shake hands or engage in any unnecessary physical contact.
 - vii. Any additional social distancing measures being implemented (see the Centers for Disease Control and Prevention's guidance at: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>).
- i. For the purposes of this Order, "Essential Travel" means travel for any of the following purposes:
- i. Travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses, or Minimum Basic Operations.
 - ii. Travel to care for any elderly, minors, dependents, or persons with disabilities.
 - iii. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.
 - iv. Travel to return to a place of residence from outside the County.
 - v. Travel required by law enforcement or court order.
 - vi. Travel required for non-residents to return to their place of residence outside the County. Individuals are strongly encouraged to verify that their transportation out of the County remains available and functional prior to commencing such travel.
 - vii. Travel to manage after-death arrangements and burial.
 - viii. Travel to arrange for shelter or avoid homelessness.
 - ix. Travel to avoid domestic violence or child abuse.
 - x. Travel for parental custody arrangements.

- xi. Travel to a place to temporarily reside in a residence or other facility to avoid potentially exposing others to COVID-19, such as a hotel or other facility provided by a governmental authority for such purposes.
- j. For purposes of this Order, “residences” include hotels, motels, shared rental units and similar facilities. Residences also include living structures and outdoor spaces associated with those living structures, such as patios, porches, backyards, and front yards that are only accessible to a single family or household unit.
- k. For purposes of this Order, “Social Distancing Requirements” means:
 - i. Maintaining **at least** six-foot social distancing from individuals who are not part of the same household or living unit;
 - ii. Frequently washing hands with soap and water for at least 20 seconds, or using hand sanitizer that is recognized by the Centers for Disease Control and Prevention as effective in combatting COVID-19;
 - iii. Covering coughs and sneezes with a tissue or fabric or, if not possible, into the sleeve or elbow (but not into hands); and
 - iv. Avoiding all social interaction outside the household when sick with a fever or cough.


All individuals must strictly comply with Social Distancing Requirements, except to the limited extent necessary to provide care (including childcare, adult or senior care, care to individuals with special needs, and patient care); as necessary to carry out the work of Essential Businesses, Essential Governmental Functions, or provide for Minimum Basic Operations; or as otherwise expressly provided in this Order.

15. Government agencies and other entities operating shelters and other facilities that house or provide meals or other necessities of life for individuals experiencing homelessness must take appropriate steps to help ensure compliance with Social Distancing Requirements, including adequate provision of hand sanitizer. Also, individuals experiencing homelessness who are unsheltered and living in encampments should, to the maximum extent feasible, abide by 12 foot by 12 foot distancing for the placement of tents, and government agencies should provide restroom and hand washing facilities for individuals in such encampments as set forth in Centers for Disease Control and Prevention Interim Guidance Responding to Coronavirus 2019 (COVID-19) Among People Experiencing Unsheltered Homelessness (<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/unsheltered-homelessness.html>).
16. Pursuant to §192.300 R.S.Mo. and §192.320 R.S.Mo., the Health Officer requests that the Sheriff, all chiefs of police, and Park Rangers in the County ensure compliance with and enforcement of this Order. The violation of any provision of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both.

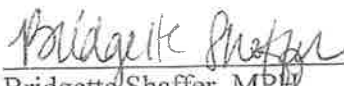
17. This Order shall become effective immediately, and will continue to be in effect until 11:59 p.m. on May 15, 2020, or until it is extended, rescinded, superseded, or amended in writing by the County Executive, Health Director, and Emergency Management Coordinator.
18. Copies of this Order shall promptly be: (1) made available outside the Jackson County Courthouses at 415 E. 12th St., Kansas City, MO 64106 (Downtown Location) and 308 W. Kansas Ave., Independence, MO 64050 (Independence Location); (2) posted on the Jackson County Health Department website (www.jacohd.org); and (3) provided to any member of the public requesting a copy of this Order.
19. If any provision of this Order to its application to any person or circumstance is held to be invalid, the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

Authenticated as Adopted

This 16th day of April, 2020



Frank White, Jr.
County Executive



Bridgette Shaffer, MPE
Director of Health



Troy M. Schalte
County Administrator & Emergency Management
Coordinator

EASTERN JACKSON COUNTY

RECOVERY PLAN PHASE 1





GOALS

1. Protect the health and safety of Jackson County residents.

The recovery plan begins with widely available testing for individuals who may have contracted COVID-19, tracing for those who have come into close contact with COVID-19 positive individuals, and isolation or quarantine for individuals who could transmit the virus.

2. Facilitate a safe start and transition to economic recovery.

Economic recovery depends on a healthy workforce. When aspects of the stay-at-home order are lifted, the Jackson County Health Department will provide guidelines so businesses can operate safely. Even after the order is lifted, workplaces will continue to look and operate differently until a COVID-19 vaccine is available.

3. Support all people and communities.

The COVID-19 outbreak has affected every resident in different ways. Many in the area will need some kind of assistance to recover. A safe return to public life will require increased social and emotional supports, food and housing security, educational and child care support, and equitable access to services.

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PHASES OF RECOVERY

The stay-at-home order consists of community-level physical distancing measures to “slow the spread.” In addition to asking community members to remain at home except for essential needs, leaders also use the stay-at-home order to increase access to diagnostic testing and increase public health and medical system capacities. These capacities are needed to safely identify and treat all COVID-19 patients and to prepare for a shift from community mitigation (what we are doing now) to case-based interventions (when we try to control spread by focusing testing and resources on infected individuals and their close contacts).

A shift to Phase I will be considered with observable progress on the following four criteria: (1) the number of new cases has declined for at least 14 days; (2) rapid diagnostic testing capacity is sufficient to test, at minimum, all people with COVID-19 symptoms, as well as close contacts and those in essential roles; (3) the healthcare system is able to safely care for all patients, including having appropriate personal protective equipment for healthcare workers; and (4) there is sufficient public health capacity to conduct contact tracing for all new cases and their close contacts. Enough progress on the aforementioned criteria has warranted a shift to Phase I of recovery efforts which will go into effect May 11th, 2020.

Phase II & III will continue to relax restrictions on businesses and activity as fewer mitigation strategies are necessary. Phase IV is the least stringent, and offers a “return-to-normal.” It is possible to return to a more stringent phase if key criteria are not met or if there is a spike in hospitalizations or deaths. Each phase will last a minimum of 14-days - consistent with the incubation period of SARS-CoV-2.

PHASES OF RECOVERY	
Stay-at-Home Order	This is the most stringent phase. Only essential businesses are to remain open.
Phase 1	This phase is relaxed compared to the stay-at-home order, but is far from “business as usual.” Phase I still recommends the highest level of caution for vulnerable community members, while also offering guidance on how many businesses may open safely.
Phase 2	During Phase II restrictions, businesses may open more fully, and fewer mitigation strategies are necessary, although some are still recommended.
Phase 3	Phase III is the least stringent and offers few staffing restrictions while still urging caution.
Phase 4	Phase IV offers a “return-to-normal.” This phase will require a vaccine or advanced therapeutic to be readily available to the general public.



GUIDING PRINCIPLES

- When able, please stay at home and avoid unnecessary travel.
- Maintain at least 6 feet of distance between individuals outside your household whenever possible.
- Masks should be worn at all times in public when you cannot assure you will be able to maintain a 6-foot distance from others.
- Practice good hand hygiene by washing hands or using hand sanitizer frequently.
- Do not touch your face with un-sanitized hands.
- Stay home if you have any symptoms of illness
- Seek medical care immediately if you have worsening signs of illness.
- Remember some community members are at very high risk of becoming very ill with COVID19. It is up to all of us to keep them safe. High risk community members (people above the age of 60, and those with underlying medical conditions) should take extra care to stay home as much as possible, including working from home, avoidance of travel and visitors from outside their immediate family.
- Businesses should thoroughly clean common areas, areas where customers interact with staff, and frequently touched surfaces often, and at least twice daily.
- Businesses should encourage telecommuting whenever possible.
- Daily workplace screenings should occur, and employees with COVID-19 symptoms should be reported to the Jackson County Health Department.

Symptoms of COVID 19 include: fever, cough, shortness of breath, sore throat, headache, chills, body aches, fatigue (tiredness), nausea/vomiting/diarrhea, loss of taste or smell.
- Individuals with symptoms should not come to work, and should ask to be tested for COVID 19 at the health department or their primary care physicians office.



SUPPORT FOR EMPLOYERS & OTHER ORGANIZATIONS

Employers and other organizations in our community care about the safety of their employees, volunteers, customers, and congregations. In order to protect safety while in a phased reopening, this document contains general guidance and strategies to support the business and nonprofit community. Due to the volume of requests, the Jackson County Health Department will not be available to gauge the setup of your business operations or approve your plans. Instead, use the resources outlined in this plan and that will be available at jacohd.org/coronavirus

COVID-19 ORGANIZATION CONTACT

Each organization is asked to select a COVID-19 coordinator for each physical location. The COVID-19 coordinator will lead the implementation of strategies to reduce the spread of COVID-19. This individual may be familiar with workplace safety (such as a safety point person, risk manager, employee health coordinator, etc.) or may have no previous experience with this topic. Key qualities of a coordinator include someone who will take action to implement the recommended measures, stay aware of changes to recommendations through the official communication channels on the website, and has the authority to reinforce the need to follow the measures on an ongoing basis throughout the reopening phases.

COVID-19 SOCIAL DISTANCING PROTOCOL – AVAILABLE BY MAY 8

All organizations are required to prepare and post by no later than 11:59 p.m. on May 10, 2020, a “Social Distancing Protocol” for each of their facilities in the County frequented by the public or employees. A template will be available on jacohd.org/coronavirus by May 8th. The Social Distancing Protocol must be substantially in accordance with the recommendations of the Centers for Disease Control and Prevention. The Social Distancing Protocol must be posted at or near the entrance of the relevant facility, and shall be easily viewable by the public and employees. All facilities that are open to the public or employees in any capacity must implement the Social Distancing Protocol and provide

evidence of its implementation. The Social Distancing Protocol must explain how the business is achieving the following, as applicable:

- Limiting the number of people who can enter into the facility at any one time to ensure that people in the facility can easily maintain a minimum six-foot distance from one another at all times and comply with Phase I guidelines, except as required to complete Essential Business activity;
- Where lines may form at a facility, marking six-foot increments at a minimum, establishing where individuals should stand to maintain adequate social distancing;
- Providing hand sanitizer, soap and water, or effective disinfectant at or near the entrance of the facility and in other appropriate areas for use by the public and employees, and in locations where there is high-frequency employee interaction with members of the public;
- Providing for contactless payment systems or, if not feasible to do so, the providing for disinfecting all payment portals, pens, and styluses after each use;
- Regularly disinfecting other high-touch surfaces; and
- Posting a sign at the entrance of the facility informing all employees and customers that they should; avoid entering the facility if they have a cough or fever; maintain a minimum six-foot distance from one another; sneeze and cough into one’s elbow; not shake hands or engage in any unnecessary physical contact.

COVID-19 SAFETY SIGNAGE – AVAILABLE BY MAY 8

Everyone doing their part is central to our local plan. An important way employers can protect the health of their employees and customers is by displaying information on the basic ways we can all do our part to protect each other’s safety. In order to help educate employees and the public, workplaces should print and post the two safety signs that



will be available at jacohtd.org/coronavirus. The first sign is for display on the public entrance of each organization. The second sign is for display on employee entrances. If there is only one entrance, both signs can be displayed at that entrance.

COVID-19 COMMUNICATION & SUPPORT – AVAILABLE BY MAY 8

The health department will remain focused on its primary role of leading efforts to build community capacity to combat COVID-19. It will not be possible for the health department to “sign off” on the ways individual businesses implement the enclosed guidelines.

Instead of directly contact the Jackson County Health Department, there will be three main ways for employers and other organizations to get information. They include a call center at 816-404-9883, newsletter, and potential virtual trainings.

COVID-19 coordinators are asked to sign up for an email distribution list (listserv) by completing a registration form. This listserv will push out emails with practical strategies employers can implement to protect their employees and customers. It will provide real-time updates, including mid-phase changes made to prevent relapse or to promote the ability of the community to advance to the next phase. This listserv will be the way employers and others can contribute ideas for the development of Phase Two and Phase Three reopening strategies found under “specific types of employers & organizations.”

COVID-19 RECOGNITION PROGRAM – AVAILABLE BY MAY 11

Employers who select COVID-19 coordinators, display the two safety signs mentioned above and enroll in the COVID-19 communication listserv will be given the opportunity to display a certificate showing their commitment to the health of their employees and customers. We know businesses in our area are eager to show their commitment to safety. By mobilizing a COVID-19 coordinator, displaying and operationalizing vital information, and staying up to date on the best ways to

reduce transmission, our area businesses will be providing their commitment through action.

PHASE 1 Criteria and Recommendations

CRITERIA

- Essential Business Operations continue as under current emergency order.
- Non-essential and commercial businesses which are not open to the public may re-open provided social distancing is followed and appropriate PPE is available.
- Non-essential businesses that are frequented by the public can open provided they limit the number of individuals (staff and customers) in the building. For locations smaller than 10,000 sq. feet, limit to 25% occupancy based on fire/building code. Locations larger than 10,000 sq. feet, limit to 10% occupancy based on fire/building code.
- Large gatherings and social events of 10 or fewer people are permitted. This includes religious services, funerals, weddings, and any other large gathering of people. Drive in and online supplements are permitted.
- All public and private schools remain closed for in-person activity. This includes summer school learning opportunities.
- All essential and non-essential businesses that are open to the general public are required to complete and post a Social Distancing Protocol that is easily accessible to the staff and customers.

RECOMMENDATIONS

- Staying at home remains the safest option.
- All persons (older than 2) should wear a mask when possible.
- All persons should practice social distancing and remain 6 feet apart.
- Employers should allow for telework for as many workers as possible.
- Employers should provide PPE if possible for workers who engage with the public and/or work in otherwise high-risk environments where social distancing is not feasible.
- Continued testing to monitor disease prevalence and determine if a spike in new infections is occurring.
- Possibility that restrictions will need to be re-imposed if there is a large spike in new infections.



Eastern Jackson County Recovery Overview – Phase 1

All Residents	<ul style="list-style-type: none">• Encourage seniors / vulnerable populations to stay at home• Encourage working from home if possible• Encourage all residents to wear masks in public• No gatherings over 10 people
Essential / Commercial Businesses	<ul style="list-style-type: none">• Can be open for business• Maintain social distancing & preventative practices• Must have a Social Distancing Protocol
Entertainment Venues	<ul style="list-style-type: none">• Closed
Retail Stores	<ul style="list-style-type: none">• Open for business• Limit the number of individuals (staff and customers) in the building. For locations smaller than 10,000 sq. feet, limit to 25% occupancy based on fire/building code. Locations larger than 10,000 sq. feet, limit to 10% occupancy based on fire/building code.• Maintain social distancing & preventative practices• Must have a Social Distancing Protocol
Personal Services <i>(Nail Salons, Hair Salons, Massage, etc.)</i>	<ul style="list-style-type: none">• Open for business by appointment only• Limit the number of individuals (staff and customers) in the building. For locations smaller than 10,000 sq. feet, limit to 25% occupancy based on fire/building code. Locations larger than 10,000 sq. feet, limit to 10% occupancy based on fire/building code.• Maintain social distancing & preventative practices• Must have a Social Distancing Protocol
Gyms & Fitness Centers	<ul style="list-style-type: none">• Closed
Outdoor Playgrounds, Sports Courts	<ul style="list-style-type: none">• Closed
Large Gatherings <i>(Churches, Funerals, Weddings)</i>	<ul style="list-style-type: none">• Limited to 10 people• Drive-in services allowed with social distancing• Maintain social distancing & preventative practices
Restaurants and Bars Selling Food	<ul style="list-style-type: none">• Dine-in allowed, but curbside and pickup encouraged• Limit the number of individuals (staff and customers) in the building. For locations smaller than 10,000 sq. feet, limit to 25% occupancy based on fire/building code. Locations larger than 10,000 sq. feet, limit to 10% occupancy based on fire/building code.• Maintain social distancing & preventative practices• Must have a Social Distancing Protocol

PHASE 1 Recovery Plan

GENERAL PUBLIC	
	GUIDANCE
Social Distancing	<ul style="list-style-type: none"> • Staying at home is safest. • Maintain 6 feet distancing from others at all times. • Outdoor activities with other individuals (groups of 10 or fewer) in which adequate social distancing is maintained is allowed.
Hygiene	<ul style="list-style-type: none"> • Wash or sanitize your hands frequently and as soon as your return home from public spaces.
Personal Protective Equipment	<ul style="list-style-type: none"> • It is recommended to wear a mask in public.
Clinical Guidance	<ul style="list-style-type: none"> • Seek testing at https://jacohd.org/coronavirus or another clinical provider if experiencing COVID-19 symptoms. • Seek medical care if needed for other conditions.

VULNERABLE POPULATIONS <i>(Older than 60 years old, immune compromised, underlying medical conditions)</i>	
	GUIDANCE
Social Distancing	<ul style="list-style-type: none"> • Stay at home if at all possible. • Maintain 6 feet distancing from others at all times. • Never congregate with others who are not members of your immediate household.
Hygiene	<ul style="list-style-type: none"> • Wash or sanitize your hands frequently and as soon as your return home from public spaces.
Personal Protective Equipment	<ul style="list-style-type: none"> • Always wear a mask in public.
Clinical Guidance	<ul style="list-style-type: none"> • Seek testing at https://jacohd.org/coronavirus or another clinical provider if experiencing COVID-19 symptoms. • Seek medical care if needed for other conditions.

LARGE GATHERINGS *(Events, Conventions, Churches, Weddings, Funerals, and any other large group gatherings)*

	GUIDANCE
Status	<ul style="list-style-type: none">• Allowed with a maximum number of 10 people.• Online and drive-in services recommended in place of in-person events.
Social Distancing	<ul style="list-style-type: none">• Maintain 6 feet distancing from others at all times.• Outdoor activities with other individuals (groups of 10 or fewer) in which adequate social distancing is maintained is allowed.
Hygiene	<ul style="list-style-type: none">• Wash or sanitize your hands frequently and as soon as your return home from public spaces.
Cleaning	<ul style="list-style-type: none">• Perform enhanced cleanings of all touched surfaces twice per day.
Personal Protective Equipment	<ul style="list-style-type: none">• Always wear a mask in public.
Symptom Screening	<ul style="list-style-type: none">• If applicable, screen workers for fevers and any symptoms of COVID with a questionnaire at workplace entrance daily (fever, cough, shortness of breath, sore throat, headache, chills, aches, fatigue, loss of smell or taste, nausea/vomiting diarrhea within the last 48 hours).• Refer employees who screen positive for COVID-19 symptoms to the Health Department for additional testing as needed.
Requirements	<ul style="list-style-type: none">• Each facility must complete and post (visible to customers and employees) a Social Distancing Protocol at each entrance.
Resources	<ul style="list-style-type: none">• CDC Community- and Faith-Based Organizations: https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/index.html

EDUCATION *(Public & Private Schools - Including Summer Learning Activities)*

	GUIDANCE
Status	<ul style="list-style-type: none">• Open for remote or distance learning ONLY.• Summer school is not allowed in Phase I

ESSENTIAL/COMMERCIAL BUSINESSES <i>(All essential businesses as defined in previous stay-at-home order)</i>	
	GUIDANCE
Status	<ul style="list-style-type: none"> • Open
Social Distancing	<ul style="list-style-type: none"> • Allow employees to work from home whenever possible. • Stagger work shifts when possible to decrease number of employees and customers present. • Maintain 6 feet social distancing from others when possible. • Keep workstations 6 feet apart. • Avoid common areas (lunchrooms, break rooms, and shared conference spaces).
Hygiene	<ul style="list-style-type: none"> • Employees must wash or sanitize hands upon entering and exiting the building and throughout the day.
Cleaning	<ul style="list-style-type: none"> • Perform enhanced cleanings of all touched surfaces twice per day.
Personal Protective Equipment	<ul style="list-style-type: none"> • Masks should be worn at all times where there is the potential for coming in contact with other people. • Other PPE (gloves), should be considered for customer interactions.
Symptom Screening	<ul style="list-style-type: none"> • Encourage the screening of workers for fevers and any symptoms of COVID with a questionnaire at workplace entrance daily (fever, cough, shortness of breath, sore throat, headache, chills, aches, fatigue, loss of smell or taste, nausea/vomiting diarrhea within the last 48 hours). • Refer employees who screen positive for COVID-19 symptoms to the Health Department for additional testing as needed.
Requirements	<ul style="list-style-type: none"> • Each facility must complete and post (visible to customers and employees) a Social Distancing Protocol at each entrance.
Resources	<ul style="list-style-type: none"> • CDC Coronavirus Disease 2019 Small Business Recommendations: https://www.cdc.gov/coronavirus/2019-ncov/community/guidancesmall-business.html • CDC Reopening Guideline https://www.cdc.gov/coronavirus/2019-ncov/community/re-open-guidance.html

ELECTIVE MEDICAL/DENTAL	
	GUIDANCE
Status	<ul style="list-style-type: none"> • Elective procedures are allowed on a per facility basis according to adequate PPE supply.
Personal Protective Equipment	<ul style="list-style-type: none"> • Each facility should follow their own professional association guidelines (American Dental Association, Centers for Medicare & Medicaid Services, etc.)

NON-ESSENTIAL BUSINESSES	
	GUIDANCE
Status	<ul style="list-style-type: none"> • Open • Limit the number of individuals (staff and customers) in the building. For locations smaller than 10,000 sq. feet, limit to 25% occupancy based on fire/building code. Locations larger than 10,000 sq. feet, limit to 10% occupancy based on fire/building code.
Social Distancing	<ul style="list-style-type: none"> • Allow employees to work from home whenever possible. • Stagger work shifts when possible to decrease number of employees and customers present. • Maintain 6 feet social distancing from others when possible. • Keep workstations 6 feet apart. • Avoid common areas (lunchrooms, breakrooms, and shared conference spaces).
Hygiene	<ul style="list-style-type: none"> • Employees must wash or sanitize hands upon entering and exiting the building and throughout the day.
Cleaning	<ul style="list-style-type: none"> • Perform enhanced cleanings of all touched surfaces twice per day.
Personal Protective Equipment	<ul style="list-style-type: none"> • Masks should be worn at all times where there is the potential for coming in contact with other people. • Other PPE (gloves), should be considered for customer interactions.
Symptom Screening	<ul style="list-style-type: none"> • Encourage the screening of workers for fevers and any symptoms of COVID with a questionnaire at workplace entrance daily (fever, cough, shortness of breath, sore throat, headache, chills, aches, fatigue, loss of smell or taste, nausea/vomiting diarrhea within the last 48 hours). • Refer employees who screen positive for COVID-19 symptoms to the Health Department for additional testing as needed.
Requirements	<ul style="list-style-type: none"> • Each facility must complete and post (visible to customers and employees) a Social Distancing Protocol at each entrance.
Resources	<ul style="list-style-type: none"> • CDC Coronavirus Disease 2019 Small Business Recommendations: https://www.cdc.gov/coronavirus/2019-ncov/community/guidancesmall-business.html

ENTERTAINMENT VENUES <i>(Community Centers, Movie Theaters, Museums, Bowling Alleys, etc.)</i>	
	GUIDANCE
Status	<ul style="list-style-type: none"> • Closed in Phase I

RESTAURANTS & BARS SERVING FOOD	
	GUIDANCE
Status	<ul style="list-style-type: none"> • Open • Limit the number of individuals (staff and customers) in the building. For locations smaller than 10,000 sq. feet, limit to 25% occupancy based on fire/building code. Locations larger than 10,000 sq. feet, limit to 10% occupancy based on fire/building code. • Self-service drink dispensers, gas station hot-rollers, self-serve buffets, and food bars are not allowed.
Social Distancing	<ul style="list-style-type: none"> • Online or by phone orders for take-out encouraged with curbside or drive-through, pickup, or delivery. • It is recommended that only immediate family members dine out together, and people with symptoms should not enter any restaurant. No more than 10 people at a single table. • Tables must be spaced at least 6 feet apart.
Hygiene	<ul style="list-style-type: none"> • Employees must wash or sanitize hands upon entering and exiting the building and throughout the day.
Cleaning	<ul style="list-style-type: none"> • Perform enhanced cleanings of all touched surfaces frequently throughout the day.
Personal Protective Equipment	<ul style="list-style-type: none"> • Workers, including wait staff should wear masks at all time and sanitize hands between tending different tables. • Other PPE (gloves), should be considered for customer interactions.
Symptom Screening	<ul style="list-style-type: none"> • Encourage the screening of workers for fevers and any symptoms of COVID with a questionnaire at workplace entrance daily (fever, cough, shortness of breath, sore throat, headache, chills, aches, fatigue, loss of smell or taste, nausea/vomiting diarrhea within the last 48 hours). • Refer employees who screen positive for COVID-19 symptoms to the Health Department for additional testing as needed.
Requirements	<ul style="list-style-type: none"> • Each facility must complete and post (visible to customers and employees) a Social Distancing Protocol at each entrance.
Resources	<ul style="list-style-type: none"> • FDA Best Practices for Retail Food Stores, Restaurants, and Food Pick-Up/Delivery Services: https://www.fda.gov/food/foodsafety-during-emergencies/best-practices-retail-food-stores-restaurants-and-food-pick-updelivery-services-during-covid-19 • National Restaurant Association: https://restaurant.org/Covid19

MASS SPORTING EVENTS	
	GUIDANCE
Status	<ul style="list-style-type: none"> • Not allowed in Phase I

RETAIL	
	GUIDANCE
Status	<ul style="list-style-type: none"> • Open • Limit the number of individuals (staff and customers) in the building. For locations smaller than 10,000 sq. feet, limit to 25% occupancy based on fire/building code. Locations larger than 10,000 sq. feet, limit to 10% occupancy based on fire/building code.
Social Distancing	<ul style="list-style-type: none"> • Avoid common areas (lunchrooms, breakrooms, and shared conference spaces). • Maintain 6 feet of social distancing of workers and customers as much as possible. • Adjust the layout of common areas including cash registers to maintain 6 feet of distance between workers. • Employ methods to decrease traffic and crowding within stores such as modifying hours, gating customers to reduce numbers, appointment-based shopping, and online services where possible.
Hygiene	<ul style="list-style-type: none"> • Employees must wash or sanitize hands upon entering and exiting the building and throughout the day.
Cleaning	<ul style="list-style-type: none"> • Perform enhanced cleanings of all touched surfaces twice per day.
Personal Protective Equipment	<ul style="list-style-type: none"> • Workers should wear masks at all time, and customers are encouraged to do so. • Use glass or plastic partitions between workers and between workers and customers
Symptom Screening	<ul style="list-style-type: none"> • Encourage the screening of workers for fevers and any symptoms of COVID with a questionnaire at workplace entrance daily (fever, cough, shortness of breath, sore throat, headache, chills, aches, fatigue, loss of smell or taste, nausea/vomiting diarrhea within the last 48 hours). • Refer employees who screen positive for COVID-19 symptoms to the Health Department for additional testing as needed.
Requirements	<ul style="list-style-type: none"> • Each facility must complete and post (visible to customers and employees) a Social Distancing Protocol at each entrance.
Resources	<ul style="list-style-type: none"> • NY Department of Health, Guidance for Cleaning and Disinfection for COVID-19 for Retail Stores: https://coronavirus.health.ny.gov/system/files/documents/2020/03/doh_covid19_cleaningdisinfectingretailstores_031620.pdf • OSHA COVID-19 Guidance for Retail Workers: https://www.osha.gov/Publications/OSHA3996.pdf • NC Department of Health and Human Services Interim Coronavirus Disease 2019 (COVID-19) Guidance for Malls and Shopping Centers: https://files.nc.gov/ncdhhs/documents/files/covid-19/NC-Interim-Guidance-for-Malls-and-Shopping-Centers-3-14-20.pdf

NURSING HOMES & CONGREGATE CARE FACILITIES/GROUP HOMES	
	GUIDANCE
Status	<ul style="list-style-type: none"> • People shall not visit nursing homes, long-term care facilities, retirement homes, or assisted living homes unless to provide critical assistance or in end-of-life circumstances.
Social Distancing	<ul style="list-style-type: none"> • Maintain 6 feet social distancing as much as possible. • Stagger work shifts when possible to decrease number of employees present. • Close common areas if at all possible. • All residents must wear masks when outside of rooms. • Dining in-room only
Hygiene	<ul style="list-style-type: none"> • Employees must wash or sanitize hands upon entering and the building and throughout the day. • Ensure all residents wash their hands when entering and exiting their rooms.
Cleaning	<ul style="list-style-type: none"> • Perform enhanced cleanings of all touched surfaces frequently throughout the day.
Personal Protective Equipment	<ul style="list-style-type: none"> • All residents must wear masks when outside of rooms if at all possible. • Staff should wear newly donned masks, gloves and gowns at all times when providing direct care to patients; when preparing medications for distribution or passing out meds; when preparing, serving or delivering food or drink; and generally when in resident rooms.
Symptom Screening	<ul style="list-style-type: none"> • Screen workers for fevers and any symptoms of COVID with a questionnaire at workplace entrance daily (fever, cough, shortness of breath, sore throat, headache, chills, aches, fatigue, loss of smell or taste, nausea/vomiting diarrhea within the last 48 hours). • Report screening results that are positive for COVID-19 symptoms to the Health Department.
Requirements	<ul style="list-style-type: none"> • Each facility must complete and post (visible to customers and employees) a Social Distancing Protocol at each entrance including a policy to limit and/or restrict the entrance of visitors (exempting end of life and critical care professionals). • If a worker or resident is positive for COVID-19, the facility must report to the health department within 12 hours.

RECREATION <i>(Parks, Outdoor Spaces, Playground Equipment, Indoor Play Spaces, etc.)</i>	
	GUIDANCE
Status	<ul style="list-style-type: none"> • Park spaces may remain open as long as social distancing is maintained. Interaction should be limited to household members as much as possible in groups no larger than 10. • Climbing equipment/playground equipment, park shelters, and any indoor recreation spaces are to remain closed. • Golf courses may remain open as long as social distancing is maintained. The club house must follow non-essential business guidelines. • Sports & youth leagues are not allowed in Phase I. This includes practices.

PERSONAL SERVICES <i>(Salons, Barber Shops, Tattoo Shops, Massage & Spa, etc.)</i>	
	GUIDANCE
Status	<ul style="list-style-type: none"> • Open by appointment only • Limit the number of individuals (staff and customers) in the building. For locations smaller than 10,000 sq. feet, limit to 25% occupancy based on fire/building code. Locations larger than 10,000 sq. feet, limit to 10% occupancy based on fire/building code.
Social Distancing	<ul style="list-style-type: none"> • Personal services by appointment only. • No clients or customers may wait inside for services. All people must call upon arrival and wait in their car until their appointment is ready. • Maintain distance of more than 6 feet for as much of the visit as possible. If not possible, swift service completion is encouraged. • Client or customer may not bring any guests with them for appointments, unless a minor is bringing one guardian or adult.
Hygiene	<ul style="list-style-type: none"> • Employees must wash or sanitize hands upon entering and exiting the building, between customers or clients, and throughout the day.
Cleaning	<ul style="list-style-type: none"> • Perform enhanced cleanings of all touched surfaces frequently throughout the day.
Personal Protective Equipment	<ul style="list-style-type: none"> • Service provider and client must wear a mask when feasible during services.
Symptom Screening	<ul style="list-style-type: none"> • Encourage the screening of workers for fevers and any symptoms of COVID with a questionnaire at workplace entrance daily (fever, cough, shortness of breath, sore throat, headache, chills, aches, fatigue, loss of smell or taste, nausea/vomiting diarrhea within the last 48 hours). • Refer employees who screen positive for COVID-19 symptoms to the Health Department for additional testing as needed.
Requirements	<ul style="list-style-type: none"> • Each facility must complete and post (visible to customers and employees) a Social Distancing Protocol at each entrance.
Resources	<ul style="list-style-type: none"> • CDC Reopening Guideline https://www.cdc.gov/coronavirus/2019-ncov/community/re-open-guidance.html • TN Department of Commerce and Insurance COVID-19 Guidelines for Cosmetology and Barber Licensees: https://www.tn.gov/commerce/news/2020/3/17/covid-19-guide-lines-for-cosmetology-and-barber-licensees.html

GYMS & FITNESS CENTERS	
	GUIDANCE
Status	<ul style="list-style-type: none"> • Closed in Phase I

CHILDCARE	
	GUIDANCE
Status	<ul style="list-style-type: none"> • Open - with limitations • Children should be cared for in rooms of 10 or less with the same caregiver each day (and cohorted so that same children are in the same room each day).
Social Distancing	<ul style="list-style-type: none"> • Keep your children home if you are able. • Children of vulnerable adults (have senior aged guardians or immune compromised parents) may choose not to enter into childcare activities. • Meals should be served in classrooms if possible with children spaced 6 feet apart. • Maintain social distancing as much as possible. • Adjust the layout of common areas including to maintain 6 feet between staff and children. • Outdoor and gym activities are allowed, but use of commonly touched items such as playground equipment, toys, and sports equipment should be avoided • Children should not interact with children from other rooms if at all possible.
Hygiene	<ul style="list-style-type: none"> • Employees must wash or sanitize hands upon entering and exiting the building and throughout the day. • Children must wash hands frequently throughout the day.
Cleaning	<ul style="list-style-type: none"> • Perform enhanced cleanings daily of multiuse equipment, toys, and frequently touched surfaces.
Personal Protective Equipment	<ul style="list-style-type: none"> • Workers should wear masks at all times. • Other PPE (gloves), should be considered for customer interactions. • All children (above the age of 2 years) and staff should wear masks as much as possible. • Staff should wear appropriate PPE at all times when providing direct care or when in physical contact with children; when preparing medications for distribution or passing out meds; when preparing, serving or delivering food or drink; and when playing with children
Symptom Screening	<ul style="list-style-type: none"> • Encourage the screening of workers for fevers and any symptoms of COVID with a questionnaire at workplace entrance daily (fever, cough, shortness of breath, sore throat, headache, chills, aches, fatigue, loss of smell or taste, nausea/vomiting diarrhea within the last 48 hours). • Refer employees who screen positive for COVID-19 symptoms to the Health Department for additional testing as needed. • In the event of a positive case associated with the location, owner must provide list of children who share a room with the positive case to the Health Department within 24 hours.
Requirements	<ul style="list-style-type: none"> • Each facility must complete and post (visible to customers and employees) a Social Distancing Protocol at each entrance. • If a worker or resident is positive for COVID-19, the facility must report to the health department within 12 hours.
Resources	<ul style="list-style-type: none"> • CDC Guidance for Schools & Child Care: https://www.cdc.gov/coronavirus/2019-ncov/community/-schools-childcare/guidancefor-schools.html • WHO Key Messages and Actions for COVID-19 Prevention and Control in Schools: https://www.dropbox.com/sh/1q29uwq5yyzyoy/AACQZPIXAJFLdlrQc-mt8iwj2a?dl=0&preview=key-messages-and-actions-for-covid-19-prevention-and-control-in-schools-march-2020.pdf

REAL ESTATE	
	GUIDANCE
Status	<ul style="list-style-type: none"> • Individual home showings are allowed by appointment. • No open houses should be offered.
Social Distancing	<ul style="list-style-type: none"> • Maintain 6 feet of social distancing from others at all times.
Hygiene	<ul style="list-style-type: none"> • All parties must wash or sanitize hands upon entering and exiting homes and throughout the day.
Cleaning	<ul style="list-style-type: none"> • Perform enhanced cleanings of all touched surfaces frequently throughout the day.
Personal Protective Equipment	<ul style="list-style-type: none"> • All persons should wear masks at all times.
Symptom Screening	<ul style="list-style-type: none"> • Encourage the screening of workers for fevers and any symptoms of COVID with a questionnaire at workplace entrance daily (fever, cough, shortness of breath, sore throat, headache, chills, aches, fatigue, loss of smell or taste, nausea/vomiting diarrhea within the last 48 hours). • Refer employees who screen positive for COVID-19 symptoms to the Health Department for additional testing as needed.
Resources	<ul style="list-style-type: none"> • CDC Reopening Guideline https://www.cdc.gov/coronavirus/2019-ncov/community/re-open-guidance.html

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Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Tuesday, April 14, 2020

Attorney General William P. Barr Issues Statement on Religious Practice and Social Distancing; Department of Justice Files Statement of Interest in Mississippi Church Case

Attorney General William P. Barr issued the following statement:

"In light of the COVID-19 pandemic, the President has issued guidelines calling on all Americans to do their part to slow the spread of a dangerous and highly contagious virus. Those measures are important because the virus is transmitted so easily from person to person, and because it all too often has life-threatening consequences for its victims, it has the potential to overwhelm health care systems when it surges.

To contain the virus and protect the most vulnerable among us, Americans have been asked, for a limited period of time, to practice rigorous social distancing. The President has also asked Americans to listen to and follow directions issued by state and local authorities regarding social distancing. Social distancing, while difficult and unfamiliar for a nation that has long prided itself on the strength of its voluntary associations, has the potential to save hundreds of thousands of American lives from an imminent threat. Scrupulously observing these guidelines is the best path to swiftly ending COVID-19's profound disruptions to our national life and resuming the normal economic life of our country. Citizens who seek to do otherwise are not merely assuming risk with respect to themselves, but are exposing others to danger. In exigent circumstances, when the community as a whole faces an impending harm of this magnitude, and where the measures are tailored to meeting the imminent danger, the constitution does allow some temporary restriction on our liberties that would not be tolerated in normal circumstances.

But 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. Thus, government may not impose special restrictions on religious activity that do not also apply to similar nonreligious activity. For example, if a government allows movie theaters, restaurants, concert halls, and other comparable places of assembly to remain open and unrestricted, it may not order houses of worship to close, limit their congregation size, or otherwise impede religious gatherings. Religious institutions must not be singled out for special burdens.

Today, the Department filed a Statement of Interest in support of a church in Mississippi that allegedly sought to hold parking lot worship services, in which congregants listened to their pastor preach over their car radios, while sitting in their cars in the church parking lot with their windows rolled up. The City of Greenville fined congregants \$500 per person for attending these parking lot services – while permitting citizens to attend nearby drive-in restaurants, even with their windows open.^[1] The City appears to have thereby singled churches out as the only essential service (as designated by the state of Mississippi) that may not operate despite following all CDC and state recommendations regarding social distancing.

As we explain in the Statement of Interest, where a state has not acted evenhandedly, it must have a compelling reason to impose restrictions on places of worship and must ensure that those restrictions are narrowly tailored to advance its compelling interest. While we believe that during this period there is a sufficient basis for the social distancing rules that

have been put in place, the scope and justification of restrictions beyond that will have to be assessed based on the circumstances as they evolve.

Religion and religious worship continue to be central to the lives of millions of Americans. This is true more so than ever during this difficult time. The pandemic has changed the ways Americans live their lives. Religious communities have rallied to the critical need to protect the community from the spread of this disease by making services available online and in ways that otherwise comply with social distancing guidelines.

The United States Department of Justice will continue to ensure that religious freedom remains protected if any state or local government, in their response to COVID-19, singles out, targets, or discriminates against any house of worship for special restrictions."

[1] The City has since stated it will drop the fines, but will continue to enforce the order.

Attachment(s):

[Download Statement of Interest](#)

Topic(s):

Coronavirus

Component(s):

[Office of the Attorney General](#)

Press Release Number:

20-380

Updated April 21, 2020

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI**

TEMPLE BAPTIST CHURCH; <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	Case No. 4:20-cv-64-DMB-JMV
CITY OF GREENVILLE, <i>et al.</i> ,)	
)	
Defendants.)	

THE UNITED STATES’ STATEMENT OF INTEREST IN SUPPORT OF PLAINTIFFS

The United States of America respectfully files this Statement of Interest pursuant to 28 U.S.C. § 517, which authorizes the Attorney General “to attend to the interests of the United States in a suit pending in a court of the United States.” The United States also enforces 34 U.S.C. § 12601, which allows the United States to bring suit when law enforcement officers engage in a pattern or practice that deprives individuals of their federal constitutional or statutory rights.

The United States has a substantial interest in the preservation of its citizens’ fundamental right to the free exercise of religion, expressly protected by the First Amendment. To that end, the United States regularly files statements of interest and amicus briefs on important issues of religious liberty in courts at every level, from trial courts to the Supreme Court of the United States. In addition, the Attorney General has issued comprehensive guidance interpreting religious-liberty protections available under the United States Constitution and federal law. *Federal Law Protections for Religious Liberty*, 82 Fed. Reg. 49668 (Oct. 6, 2017) (hereinafter “Attorney General Guidelines”). As relevant here, the Attorney General Guidelines explain that “although government generally may subject religious persons and organizations to

neutral generally applicable laws,” government cannot “apply such laws in a discriminatory way” or otherwise “target persons or individuals because of their religion.” *Id.* at 49669.

Especially in the midst of the COVID-19 pandemic, the United States has a strong interest in ensuring the development and maintenance of the best possible public health strategies to combat the virus and protect the people of the United States from harm. This case raises issues of national public importance regarding the interplay between the government’s compelling interest in protecting public health and safety from COVID-19 and citizens’ fundamental right to free exercise of religion.

INTRODUCTION¹

This suit is brought by Temple Baptist Church, a church in Greenville, and its Pastor, Arthur Scott (collectively, the “church”) against the City of Greenville and its mayor (collectively, the “city”) alleging that the city has taken improper action to stop it from holding drive-in church services in response to the COVID-19 virus. The church broadcasts its service over a low-power FM station for its parishioners who gather in their cars in the church’s parking lot. ECF 1, ¶ 24. Attendees are required to remain in their cars at all times with their windows rolled up. *Id.* ¶¶ 1, 27. The church does not have a website or the ability to stream services online, and “many church members do not have social media accounts, the ability to participate in a Zoom call, or watch services online.” *Id.* ¶ 23.

The Mississippi governor has designated churches and other religious entities as an “essential business or operation” that can operate so long as they adhere to Centers for Disease Control and Prevention (CDC) and Mississippi Department of Health guidelines. *Id.* ¶¶ 35-42. On April 7, 2020, however, the city issued an order titled “Executive Order Regarding Church

¹ The United States submits this brief on the basis of the facts alleged in the complaint.

Services” that barred churches from holding in-person or drive-in services until the Governor’s shelter in place order is lifted. *Id.* ¶ 44. On April 8, the city dispatched eight uniformed police officers to the church. *Id.* ¶ 52-53. “[N]o one was outside his or her car at any point during the service, including when the City police arrived” and those “attending the service were sitting peacefully inside their cars listening to Pastor Scott’s sermon, with their windows rolled up.” *Id.* ¶ 54-55. The police then “began knocking on car windows, demanding driver’s licenses, and writing citations with \$500 fines.” *Id.* ¶ 56.

The church filed this suit in response, raising claims under, *inter alia*, the Free Exercise Clause, and under the Mississippi Religious Freedom Restoration Act (MRFRA), MISS. CODE ANN. § 11-61-1(5) (2020).

ARGUMENT

I. Constitutional Rights Are Preserved During a Public Health Crisis

The federal government, the District of Columbia and all 50 states have declared a state of emergency and have taken unprecedented, but essential, steps to contain the spread of the novel coronavirus, and consequences of the life-threatening COVID-19 pandemic. *See, e.g.*, Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (March 13, 2020).² The President has issued “Coronavirus Guidelines for America” which, among other measures, urge the public to “follow the directions of [their] state and local authorities,” to “avoid social gatherings in groups of more than 10 people” and to “use drive-thru, pickup, or delivery options” instead

² Presidential Proclamation, Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (Mar. 13, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>

of “eating or drinking at bars, restaurants, and food courts.”³ The CDC has recommended that individuals “[s]tay home as much as possible” and when in public keep “about 6 feet” away from others.⁴ States and localities have imposed a variety of measures, including mandatory limitations on gatherings. Observing these guidelines is the best path to swiftly ending COVID-19’s profound disruptions to our national life and resuming the normal economic life of our country. Citizens who seek to do otherwise are not merely assuming risk with respect to themselves, but are exposing others to the same danger. It is for that reason that state and local governments have acted to protect public health by restricting in-person assemblies, including religious assemblies.

There is no pandemic exception, however, to the fundamental liberties the Constitution safeguards. Indeed, “individual rights secured by the Constitution do not disappear during a public health crisis.” *In re Abbott*, --- F.3d ---, 2020 WL 1685929, at *6 (5th Cir. Apr. 7, 2020). These individual rights, including the protections in the Bill of Rights made applicable to the states through the Fourteenth Amendment, are always in force and restrain government action.

At the same time, the Constitution does not hobble government from taking necessary, temporary measures to meet a genuine emergency. According to the Supreme Court, “in every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand.” *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 29 (1905).

³ Coronavirus Guidelines for America (Mar. 16, 2020), https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf

⁴ Centers for Disease Control, How to Protect Yourself and Others (April 8, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>

The “settled rule [from *Jacobson*],” the Fifth Circuit recently explained, “allows the state to restrict, for example, one’s right to peaceably assemble, to publicly worship, to travel, and even to leave one’s home.” *In re Abbott*, 2020 WL 1685929, at *6. And, critically, “[t]he right to practice religion freely does not include the liberty to expose the community . . . to communicable disease.” *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944). Emergency public health measures such as gathering limitations and social distancing requirements in response to COVID-19 are evaluated under the Supreme Court’s decision in *Jacobson*. Courts owe substantial deference to government actions, particularly when exercised by states and localities under their police powers during a bona fide emergency.

Nevertheless, the Supreme Court has instructed courts to intervene:

[I]f a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is, *beyond all question, a plain, palpable invasion of rights secured by the fundamental law.*

Jacobson, 197 U.S. at 31 (emphasis added). As a result, government can take extraordinary, temporary measures to protect the public. In *Jacobson*, the Court explained, by way of example, that “[a]n American citizen arriving at an American port” who had traveled to a region with yellow fever “may yet, in some circumstances, be held in quarantine against his will.” *Id.* at 29.

If, however, the record establishes “beyond all question, a plain, palpable” violation of the foregoing principles, then a court must grant relief. *See In re Abbott*, 2020 WL 1685929, at *7. Courts reviewing a challenge to a measure responding to the “society-threatening epidemic” of COVID-19 should be vigilant to protect against clear invasions of constitutional rights while ensuring they do “not second-guess the wisdom or efficacy of the measures” enacted by the democratic branches of government, on the advice of public health experts. *Id.*

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

A. The Free Exercise Clause guarantees to all Americans the “right to believe and profess whatever religious doctrine [they] desire[.]” *Empl’t Div. v. Smith*, 494 U.S. 872, 877 (1990). It also protects their right to act on these beliefs, through gathering for public worship as in this case, or through other acts of religious exercise in their daily lives. While the protections for actions based on one’s religion are not absolute, *id.* at 878-79, among the most basic requirements of the Free Exercise Clause are that government may not restrict “acts or abstentions only when they are engaged in for religious reasons, or only because of the religious belief that they display,” *id.* at 877, nor “target the religious for special disabilities based on their religious status.” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2019 (2017) (internal quotation marks omitted); *see also* Attorney General Guidelines, 82 Fed. Reg. at 49672.

To determine whether a law impermissibly targets religious believers or their practices, the Supreme Court has directed courts to “survey meticulously” the text and operation of a challenged law to ensure that it is neutral and of general applicability. *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 534 (1993). The Court explained: “The principle that government, in pursuit of legitimate interests, cannot in a selective manner impose burdens only on conduct motivated by religious belief is essential to the protection of the rights guaranteed by the Free Exercise Clause.” *Id.* at 543; *see also* Attorney General Guidelines, 82 Fed. Reg. at 49672.

Under the Free Exercise Clause, a law or rule, or the application of a law or rule, that is not both neutral and generally applicable is subject to heightened scrutiny. *Church of the Lukumi Babalu Aye*, 508 U.S. at 531.

A law or rule is not neutral if it singles out particular religious conduct for adverse treatment; treats the same conduct as lawful when undertaken for secular reasons but unlawful when undertaken for religious reasons; visits “gratuitous restrictions on religious conduct”; or “accomplishes . . . a ‘religious gerrymander,’ an impermissible attempt to target [certain individuals] and their religious practices.” *Id.* at 533-35, 538 (internal quotation marks omitted); *see also* Attorney General Guidelines, 82 Fed. Reg. at 49672. In short, “[t]he Free Exercise Clause bars even ‘subtle departures from neutrality’ on matters of religion.” *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 138 S. Ct. 1719, 1731 (2018) (quoting *Church of the Lukumi Babalu Aye*, 508 U.S. at 534).

A law is not generally applicable if “in a selective manner [it] impose[s] burdens only on conduct motivated by religious belief,” including by “fail[ing] to prohibit nonreligious conduct that endangers [its] interests in a similar or greater degree than . . . does the prohibited conduct.” *Church of the Lukumi Babalu Aye*, 508 U.S. at 534; *see also* Attorney General Guidelines, 82 Fed. Reg. at 49672.

Accordingly, the Supreme Court’s free exercise decisions instruct this Court to “survey meticulously,” *id.* at 534, the risks and character of the various essential services that the city continues to permit. The Court must determine whether the city’s distinctions between nonreligious essential services and religious essential services are truly neutral and generally applicable. In other words, the Court must ensure that like things are treated as like, and that religious organizations are not singled out for unequal treatment. *See id.* at 533-34.

If the Court determines that the city's prohibition on drive-in church services is in fact not the result of the application of a generally applicable and neutral law or rule, then it must review the city's justifications and determine if the city has demonstrated a compelling governmental interest, pursued through the least restrictive means. *See id.* at 546.

The Court must be appropriately deferential to the expertise of public health officials in evaluating potential distinctions between a drive-in church and other permitted essential activities where people gather in cars, parking lots, or interact in some way in significant numbers. *See Jacobson*, 197 U.S. at 31; *In re Abbott*, 2020 WL 1685929, at *7. But such deference will not justify action that is "beyond all question, a plain, palpable" violation of free exercise principles. *Jacobson*, 197 U.S. at 31; *see also In re Abbott*, 2020 WL 1685929, at *7. Thus, if the Court determines that the city's prohibition is not in fact the result of a neutral and generally applicable law or rule, then the Court may sustain it only if the city establishes that its action is the least restrictive means of achieving a compelling governmental interest. *Church of the Lukumi Babalu Aye*, 508 U.S. at 546.

B. The allegations in the complaint strongly suggest that the city's prohibition of drive-in church services, despite the inclusion of measures to reduce risk such as requiring people to remain in their cars, are neither neutral nor generally applicable.

Take neutrality first. According to the city, "ALL businesses and industries deemed essential by state and federal orders" may continue operations, ECF 1, ¶ 45, and the state has designated churches such as the one here as essential. Nevertheless, the city barred the church from holding services even if the church adheres to CDC and Mississippi COVID-19 guidelines for essential operations. *See id.* ¶¶ 33, 35. These allegations suggest that the city singled out

churches for distinctive treatment not imposed on other entities the state has designated as essential services.

In addition to appearing non-neutral, the church's allegations also tend to show that the city's emergency actions are not applied in a generally applicable manner. The church alleges facts tending to show that conduct is being permitted for various secular reasons when equivalent conduct is being forbidden to churches holding drive-in services. Notably, the city appears to permit citizens to sit in a "car at a drive-in restaurant with [their] windows rolled *down*," but not "at a drive-in church service with [their] windows rolled *up*." *Id.* ¶ 51. The church thus alleges that the city has "fail[ed] to prohibit nonreligious conduct that endangers [its] interests in a similar or greater degree," *Church of the Lukumi Babalu Aye*, 508 U.S. at 543, than drive-in services like the church's here.

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

The Court should apply heightened scrutiny under the Free Exercise Clause if it determines, after applying appropriate deference to local officials, that the church has been treated by the city in a non-neutral and non-generally applicable manner. The same analysis would apply if the Court found that the church's religious exercise has been burdened under the Mississippi Religious Freedom Restoration Act, MISS. CODE ANN. § 11-61-1(5)(b) ("Mississippi RFRA"). The federal Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb, which applies to federal action (but not state and local government action) "prohibits the Government from substantially burdening a person's exercise of religion . . . unless the Government demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 695 (2014)

(citations and internal marks omitted). This is true “even if the burden results from a rule of general applicability,” *O Centro Espirita Beneficente Uniao do Vegetal v. Gonzales*, 546 U.S. 418, 424 (2006). Mississippi’s RFRA similarly states that the government “may substantially burden a person’s exercise of religion only if it demonstrates that application of the burden to the person: (i) is in furtherance of a compelling governmental interest; and (ii) is the least restrictive means of furthering that compelling governmental interest.” MISS. CODE ANN. § 11-61-1(5)(b). This is a difficult standard to meet.

As a general matter, prohibiting large gatherings to prevent the spread of COVID-19 undeniably advances a compelling government interest. The Fifth Circuit recently recognized “the escalating spread of COVID-19, and the state’s critical interest in protecting the public health.” *In re Abbott*, 2020 WL 1685929, at *1. However, that is not the end of the inquiry. In *O Centro*, the Supreme Court considered under the federal RFRA whether banning a religious group from using a particular controlled substance in its worship service was supported by the compelling interest of enforcing the drug laws. *See* 546 U.S. at 428-39. The Court recognized that while enforcing the drug laws constitutes a compelling interest as a general matter, the government had to show more—a compelling interest in applying those laws to the small religious group that sought to use a drug in religious ceremonies that was not a sought-after recreational drug and thus not prone to diversion. Drawing on its Free Exercise Clause precedents, the Supreme Court held that courts must look “beyond broadly formulated interests justifying the general applicability of government mandates and scrutinize[] the asserted harm of granting specific exemptions to particular religious claimants.” *Id.* at 431.

The Supreme Court has noted that “‘context matters’ in applying the compelling interest test, and has emphasized that strict scrutiny’s fundamental purpose is to take ‘relevant

differences’ into account.” *Id.* (citations omitted). For example, in *Cutter v. Wilkinson*, the Supreme Court applied the compelling interest standard in a manner that directed that prison administrators be afforded deference on what constitutes safety and good order. 544 U.S. 709, 723 (2005). Similarly, here, a court must apply this standard in the context of a pandemic that officials have predicted—if unchecked—could claim a significant number of American lives. On the other hand, the requirement set forth in *O Centro* that a compelling interest must be evaluated in context rather than by reference to a broad general principle such as health or safety, and the related requirement that the government must use the least restrictive means to achieve its interest, *see Hobby Lobby*, 573 U.S. at 728 (the “least-restrictive-means standard is exceptionally demanding”), emphasize that a court must engage in a searching inquiry.

The question for this Court, then, is whether the city’s alleged actions here—namely, “reclassif[ying] churches as ‘non-essential’” businesses and operations so as to prevent this church from engaging in its “‘drive-in’ services [that] involve no in-person contact,” ECF 1, ¶¶ 24, 45—further a compelling interest, and whether there is no less restrictive measure the city could use to achieve that interest while allowing the church to hold its services. If in this fact-intensive and context-laden analysis, the court determines that there are no “relevant differences,” *O Centro*, 546 U.S. at 420, with regard to the efficacy in containing COVID-19 between what the church proposed and what the city would require, then the city’s measure must yield to the church’s sincerely held religious exercise.

The facts alleged in the church’s complaint strongly suggest that there are no such differences and that the city should allow the church to hold its drive-in services. Under strict scrutiny, the city has the burden to demonstrate that prohibiting the small church here from holding the drive-in services at issue here—services where attendees are required to remain in

their cars in the church parking lot at all times with their windows rolled up and spaced consistent with CDC guidelines—is the least restrictive means of furthering a compelling interest. As of now, it seems unlikely that the city will be able to carry that burden. Again, according to the complaint, the church “does not allow those attending its ‘drive-in’ services’ to leave their cars for any reason,” ECF 1, ¶ 5, and requires them to space their cars “beyond CDC guidelines,” with their “windows up,” *id.* ¶¶ 1, 24. Based on those allegations, it is unclear why prohibiting these services is the least restrictive means of protecting public health, especially if, as alleged in the complaint, the city allows other conduct that would appear to pose an equal—if not greater—risks, *see id.* ¶ 51.

CONCLUSION

The United States respectfully requests the Court to consider the arguments set forth above in evaluating this case. The facts alleged in the complaint strongly suggest that the city’s actions target religious conduct. If proven, these facts establish a free exercise violation unless the city demonstrates that its actions are neutral and apply generally to nonreligious and religious institutions or satisfies the demanding strict scrutiny standard.

Dated: April 14, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that this 14th day of April 2020, the foregoing United States' Statement of Interest was electronically filed with the Clerk of Court using the CM-ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ William C. Lamar

WILLIAM C. LAMAR

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Bridgette Shaffer, MPH
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Independence, Missouri 64050
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Reference: JACKSON COUNTY AMENDED STAY AT HOME ORDER,
DATED APRIL 16, 2020, AS MODIFIED BY EASTERN
JACKSON COUNTY RECOVERY PLAN, PHASE I, DATED
MAY 6, 2020.

**RESPONSE REQUIRED BEFORE CLOSE OF BUSINESS THURSDAY, MAY 7,
2020.**

Dear Mr. White, Mr. Schulte and Ms. Shaffer:

I am writing on behalf of several Jackson County churches, including Abundant Life Baptist Church, Lee's Summit, Mo. and Fellowship Church, Greenwood, Mo.

For more than a decade, most of my law practice has involved representation of churches, religious groups, and nonprofit institutions involved in litigation. We have represented these groups at all levels of state and federal courts, including at the United States Supreme Court. See *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 US __, 137 S. Ct. 2012 (2017). For the past five years, I have been on the steering committee of the University of Missouri - Kansas City Law School's annual half-day conference on Law and Religious Liberty. I serve as legal counsel for a number of Southern Baptist churches and denominational entities in Missouri. I am also an 'allied attorney' with

Alliance Defending Freedom, having completed ADF's law and religion "Blackstone Fellowship" in 2003, during my second year at Harvard Law School.

As churches in this community, these clients are grateful for efforts made at every level to keep our communities safe. As Christians, they pray frequently for leaders at every level of government, like President Trump, Governor Parson, and County and local officials like you, as you seek to protect citizens from the novel coronavirus, COVID-19.

They also understand the difficult task of balancing economic and health risk as you make decisions about "reopening" Eastern Jackson County (that portion outside of Kansas City's limits). Governor Parson has been appropriately reluctant to issue orders that put government in the place of treating religious activity as "non-essential." Even when not required, many Baptist churches have abstained from regular meetings as requested by government officials.

However, even in a time of pandemic, our basic laws protect the freedoms of religious individuals. As Attorney General Barr recently said, "[E]ven 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. Thus, government may not impose special restrictions on religious activity that do not also apply to similar nonreligious activity."

Given these important concerns, Abundant Life had asked for a meeting with the Health Department last week, to discuss its concerns and provide input about any orders. Ms. Shaeffer declined a meeting and told Abundant Life to look for guidance on the County's website when it came out.

We believe your order and Plan released May 6, 2020, plainly crosses the line into an unconstitutional restriction on the rights of religious citizens in eastern Jackson County. Your order criminalizes religious worship of the Almighty God in a gathered assembly, an "indefeasible" right guaranteed in Missouri's Constitution. The right to worship can only be regulated by restrictions "essential" to achieve a compelling governmental interest. On its face, your order allows retail stores to gather more than ten people in a building of sufficient size, so long as there is proper social distancing. Inexplicably, the County additionally discriminates against churches in Eastern Jackson County, apparently allowing churches in western Jackson County to operate under the more generous rules of Kansas City. Having different rules for Eastern Jackson County and Kansas City adds confusion as well as a constitutional violation of unequal treatment.

We are writing to ask you to revise the order and plan immediately, so that religiously-motivated gatherings are allowed to meet the less-restrictive standards you apply to other groups for similar activity. Tomorrow is a state holiday. So that we may communicate to our members this Sunday about our plans for services on May 17, we request a response by close of business today, or else we will be forced to seek an injunction.

THE MAY 6, 2020 RECOVERY PLAN, PHASE I, INEXPLICABLY SINGLES OUT FAITH-MOTIVATED ACTIVITIES FOR GREATER RESTRICTIONS ON CROWD SIZE THAN THE LIMITS APPLIED TO RETAIL STORES OF SIMILAR SIZE.

Your Plan of May 6, 2020, which modifies the Order of April 16, 2020, follows many of the recommendations in Governor Parson's April 27, 2020, order. The statewide order follows expert advice, in reopening retail sales businesses based on square foot limits, and restaurants based on available seating area. The statewide order does not impose *subject matter* restrictions on the reasons for these gatherings. The state's rule satisfies Missouri's interests in limiting the risk of COVID-19 spread. Your Recovery Order adopts similar restrictions for retail business, restaurants and bars, and personal services:

"For business locations smaller than 10,000 sq. feet, limit to 25% occupancy based on fire/building code. Locations larger than 10,000 sq. feet, limit to 10% occupancy based on fire/building code." (p 12)

But then your Recovery Order goes on to target faith-based activities on Page 8, to say that "Large Gatherings (Churches, funerals, weddings)" have a "Limit of 10 people" regardless of the size of the facility. All of these are activities that Churches undertake as religious activities. Your Amended Order, page 3, section 7, generally prohibited:

All public and private gatherings of any number of people occurring outside a household or living unit are prohibited, except for the limited purposes expressed or permitted in this Order. Nothing in this Order prohibits members of a single household or living unit from engaging in Essential Travel or Essential Activities together.

Section 14f defines essential businesses, which does not include churches. There is no explanation given as to why church building gatherings are legally or medically different from gatherings in retail stores, restaurants, or bars.

As I am sure you know, it is plainly unconstitutional to intentionally target religious groups for unfair treatment.

While your Plan names some other activities as types of large gatherings that are subject to the ten-person limit, the "large gatherings" category looks like a pretext to this attorney. I note that every web page regarding your plan has a link in the top left corner:

Stay Home Worship Remotely

There is no button like this to warn people to stay away from restaurants and bars. No similar link for retail stores or personal services. The message is clear that Jackson County wants churchgoers to stay home and watch televised services, and not get out. Shoppers and diners, meanwhile, are treated far more generously. The County never gives a reason to think sitting in a church must be less healthy and safe than sitting in bar.

There was no need to make a distinction between retail store gatherings and “large gatherings” (more than 10) at a church, unless the purpose was to emphasize that the county views religious gatherings with disfavor. Why would you call 11 people in church a “large gathering” but not 11 people in a bar or restaurant? But the Constitutional rule is not satisfied by adding examples of non-religious institutions that would be covered by the proposed “large gatherings” ban.

MISSOURI LAW IS MORE PROTECTIVE THAN FEDERAL LAW, AND REQUIRES ALL RELIGIOUS RESTRICTIONS TO BE “ESSENTIAL” AND “NOT UNDULY RESTRICTIVE,” USING RULES THAT DO NOT DISCRIMINATE AGAINST RELIGION OR AMONG RELIGIONS.

Missouri law is strongly protective of religious freedom, even more so than the United States Constitution. Of course, the First Amendment to the United States Constitution prohibits government from prohibiting the free exercise of religion; or abridging the freedoms of speech and peaceable assembly.

Missouri’s Constitution goes farther. It guarantees “[t]hat all men and women have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences” Art. I, Sec. 5. Moreover, “a citizen’s right to pray or express his or her religious beliefs be infringed.” Your office must “ensure that any person shall have the right to pray individually or corporately in a private or public setting so long as such prayer does not result in disturbance of the peace or disruption of a public meeting or assembly.” The only limit on these rights is “licentiousness,” “the good order, peace or safety of the state” and “the rights of others.”

Even Missouri statutes are more protective than federal law. The 8th Circuit said just last year:

[Missouri’s Religious Freedom] statute [RSMo. 1.302] appears more protective of religious exercise than the Federal RFRA statute, 42 U.S.C. § 2000bb-1, and RLUIPA statute, § 2000cc, as well as many other state RFRA laws because **it prohibits any “restriction” on religious exercise, not just “substantial” burdens.** *See, e.g.,* 775 Ill. Comp. Stat. 35/15 (providing that the government may not “substantially burden” religious exercise); Tex. Civ. Prac. & Rem. Code Ann. § 110.003(a) (providing that the government may not “substantially burden” religious exercise). In addition, the usual strict-scrutiny standard also appears heightened. Strict scrutiny requires that a regulation be “narrowly tailored to further compelling governmental interests.” *Sherbrooke Turf, Inc. v. Minn. Dep’t of Transp.*, 345 F.3d 964, 969 (8th Cir. 2003). In contrast, the Missouri RFRA

requires that a regulation be “essential to further a compelling governmental interest” and must also be “not unduly restrictive” given the circumstances. Mo. Rev. Stat. § 1.302.1(2).

Marianist Province of United States v. City of Kirkwood, 944 F.3d 996, 1003–04 (8th Cir. 2019)(emph. added).

YOUR RECOVERY PLAN OF MAY 6, 2020, FAILS TO USE GENERALLY APPLICABLE RULES.

Applying the legal rules, it is clear the Plan fails to meet the requirements. RSMo. 1.302 says any restriction on religion must be a result of “a rule of general applicability,” that “does not discriminate against religion, or among religions.”

Your order, however, explicitly burdens “churches, weddings and funerals” in a way that is different from other businesses, essential or non-essential.

Sec. 9, then, lists “essential” businesses to include facilities such as grocery stores, farmer’s markets, produce stands, liquor stores, stock brokers, and laundromats. However, houses of worship are deemed to be safe only to the extent they are facilitating “streaming worship remotely,” or “drive in” services. It is not clear why all other Essential Businesses were not required to limit themselves to streaming or drive-in activities where available. Only churches and schools were singled out for a “worship remotely” directive.

This difference discriminates against places of worship, and among different faiths. Our churches hold a variety of opinions about whether preaching, communion, or baptism must properly take place with the “gathered” body, or can be done at a distance. We imagine other faiths have similar practices. The singling out to require “remote worship,” allows some faiths to proceed according to their conscience, but not others.

Indeed, we believe the entire project of calling some or all religious worship “essential” or “non-essential,” or categorizing it as a “large gathering” is suspect. It masks the need to use actual safety criteria, instead of prejudicial assumptions about the relative need for spiritual care. The United States Department of Justice recently filed a “statement of interest” in a case in Mississippi, where a town deemed churches “non-essential,” in a way that blocked drive-in services. In such cases, says the Department, “if ...there are not relevant differences with regard to the efficacy in containing COVID-19 between what the church proposed and what the city would require, then the city’s measure must yield to the church’s sincerely held religious exercise.” United States’ Statement of Interest in Support of Plaintiffs, 4:20- cv-64-DMB-JMV) (N.D.Miss. 2020).

Likewise, Jackson County has not shown a relevant difference between gathering for commercial purposes and gathering for religious purposes. The County must identify

the criteria that make such gatherings safe, if there are such criteria, and at least provide Churches an opportunity to meet that criteria.

YOUR ORDER OF MAY 6, 2020, FACIALLY FAILS TO SUBJECT CHURCHES TO THE “ESSENTIAL” AND “NOT UNDULY RESTRICTIVE” LIMITS.

The order also fails to meet the legal obligations, because it limits “large gatherings” of more than ten people, but allows gatherings of more than ten people for commercial purposes.

The County may only restrict worship activities to the extent they are essential to the County’s compelling interest. We accept, for purposes of this letter, that you have a compelling interest in protecting the life and health of persons in Jackson County, that the various laws and regulations cited in the Amended Order of April 16, 2020, are valid, and (except for the portions singling out religious activity) the amended order and recovery plan are otherwise a valid exercise of your power under those ordinances. ^[1]

What restrictions are “essential” to the County’s interest? The Supreme Court says courts will look under federal law “beyond broadly formulated interests ... and scrutinize [] the asserted harm of granting specific exemptions...” 546 US at 431. Government must at least show that it “lacks other means of achieving its desired goal.” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 728 (2014). Government fails to meet its burden when it acknowledges that it permits “an approach that is less restrictive” to others. *Id.* at 730. (HHS must extend religious accommodation to for profit and non-profit businesses).

Your order gives “retail businesses” a way to gather more than ten people in a building, in a way that meets the governmental interest. It gives restaurants and bars a way to gather more than ten people in a building, in a way that meets the governmental interest. It appears that more than ten people can meet the guidelines in a room as small as 50x50, a space smaller than the average McDonalds restaurant.

Your Recovery Plan makes no other judgments about the *reason* for being in a place, as those are not essential to the County’s goals. Retail gatherings of more than ten are permitted, even if they are for objectively unhealthy goals; a consumer could buy cigarettes at Wal-Mart; cheeseburgers and fries at a restaurant, and kegs of beer and cigars at the Happy Hour Liquor Store, each store holding more than 10 people.

Gatherings of more than ten are not *time* limited in your Plan, as such limits are apparently not essential to the County’s goals. A good workout at Anytime Fitness might take more than an hour. An ophthalmologist visit might take an hour. Stocking up on groceries for the week at Price-Chopper might take more than an hour for a family. A cut, color, and style at a salon could take two or more hours. Stereotypes about longwinded ministers aside, church services can take place in far less than an hour.

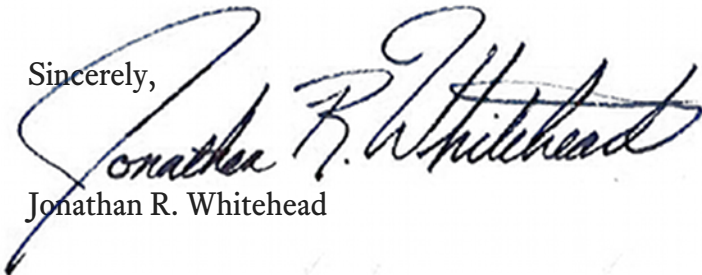
The Recovery Order makes no judgment about the *conduct* in those places, if certain social distancing criteria are met. Other criteria on conduct, then, are not essential to the County's goals. There is no prohibition on talking to your neighbor from a safe distance at Menards. Citizens may seek vocal coaching or singing lessons from any number of businesses.

Even if the retail business criteria are essential to achieving the government goal, Jackson County cannot apply higher criteria to churches. When Jackson County has declared all faith-motivated gatherings with more than ten people to be different than all commercially-motivated gatherings with more than ten people, depriving churches of any chance to meet the safety-driven criteria.

From the public safety perspective, we see no difference between gathering more than ten people at a store and gathering more than ten people in a church of the same size. And if such differences existed, churches should be able to decide if their religious goals can be met within the government's safety parameters. For example, if given a chance, we believe many churches would arrange to hold services as best they can, within whatever square-footage and distancing limits are available.

Because these issues are vitally important, and because Jackson County issued its guidelines after Kansas City very publicly changed its guidance to churches, and because we must be able to communicate with our members at services this week about our plans for May 17, 2020, we need to hear a response from the County today. If not, we will be forced to seek a temporary restraining order or other relief from a Court.

Sincerely,

A handwritten signature in blue ink, reading "Jonathan R. Whitehead". The signature is fluid and cursive, with the first name "Jonathan" and last name "Whitehead" clearly legible. The middle initial "R." is also present.

Jonathan R. Whitehead

[\[1\]](#) If this matter is not resolved, we reserve the right to challenge any provision of the Jackson County ordinance as invalid.

JS 44 (Rev 09/10)

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI****CIVIL COVER SHEET**

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Western District of Missouri.

The completed cover sheet must be saved as a pdf document and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s):**First Listed Plaintiff:**

Abundant Life Baptist Church of Lee's Summit, Missouri ;

County of Residence: Jackson County**Defendant(s):****First Listed Defendant:**

Jackson County, Missouri ;

County of Residence: Jackson County**Additional Defendants(s):**

Jackson County Health Department ;

Truman Medical Center, Incorporated ;

Frank White Jr.;

Troy Schulte ;

Bridgette Shaffer ;

County Where Claim For Relief Arose: Jackson County**Plaintiff's Attorney(s):**

Jonathan R. Whitehead (Abundant Life Baptist Church of Lee's Summit, Missouri)

Law Offices of Jonathan R. Whitehead LLC

229 SE Douglas St., Ste. 210

Lees Summit, Missouri 64063

Phone: 8163988305**Fax:****Email:** jon@whiteheadlawllc.com**Defendant's Attorney(s):****Basis of Jurisdiction:** 3. Federal Question (U.S. not a party)**Citizenship of Principal Parties (Diversity Cases Only)****Plaintiff:** N/A**Defendant:** N/A**Origin:** 1. Original Proceeding**Nature of Suit:** 440 All Other Civil Rights**Cause of Action:** First and Fourteenth Amendments to the Constitution of the United States; 42 U.S.C. §2000cc; 42 U.S.C. §1983**Requested in Complaint****Class Action:** Not filed as a Class Action**Monetary Demand (in Thousands):****Jury Demand:** Yes**Related Cases:** Is NOT a refiling of a previously dismissed action

Signature: Jonathan R. Whitehead**Date:** 05/06/2020

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.