



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

REV. DAVID W. LANDOW, individually :
and as Pastor of the Emmanuel Orthodox :
Presbyterian Church, :

Plaintiff, :

v. :

GOVERNOR JOHN C. CARNEY, :
individually and in his official capacity as :
the Governor of Delaware, :

Defendant. :

C.A.No. 21-_____

VERIFIED COMPLAINT

I. INTRODUCTION

A. Summary Overview

1. There can be no question over the centrality and sincerity of the religious beliefs and practices asserted in dozens of paragraphs of necessary facts alleged in this case. For over 1800 years since the Roman Emperor Constantine gave Christianity legal status, Christians have been publicly meeting in person in churches and elsewhere to worship God, be taught, celebrate the sacraments, and sing. Nor can there be any question that in identical language found in all four Delaware Constitutions, of 1776, 1792, 1831, and 1897, the Governor has been

denied all power to “interfere with or in any manner control the rights of conscience in the free exercise of religious worship.”

2. The legal question presented by this case involves the plain language and intent of several detailed provisions of the Delaware Constitution protecting these historic rights of religious assembly, worship, and exercise. On September 11, 1776, the Declaration of Rights and Fundamental Rules of the Delaware State was ratified. Nine days later, it was followed by the first Delaware Constitution of 1776, which incorporated and adopted the Declaration. The Framers of these foundational, organic Delaware documents zealously protected religious assembly, worship and exercise – writing they could never be violated “on any pretence [sic] whatsoever” – all at a time when they were all too familiar with plague, pestilence, and, to use a modern word, pandemic, due to countless deaths from bubonic plague, malaria, and smallpox. Sixteen years later, those same religious protections were expanded upon and strengthened in the Delaware Constitution of 1792. Subsequent iterations in 1831 and finally our current Delaware Constitution of 1897 carried forward those same protections with no substantive change.¹ The meaning of the words of these Constitutional provisions are at the core of this

¹ See Rodman Ward, Jr. and Paul J. Lockwood, Bill of Rights Article I, in The Delaware Constitution of 1897: The First One Hundred Years 76, 85 (Randy J. Holland & Harvey Bernard Rubenstein eds., 1997) (has “never since significantly changed”).

case.

3. This is a civil action for declaratory and permanent injunctive relief, as well as for nominal and compensatory damages, for the loss of religious freedoms under Article I, Section 1 of the Delaware Constitution of 1897 (hereinafter “Art. I, § 1”), and also the First and Fourteenth Amendments to the U.S. Constitution, during the first fourteen weeks of the COVID-19 pandemic emergency in Delaware from March 13, 2020 to June 15, 2020. It seeks to terminate wholesale discrimination against in person religious worship, speech, assembly, association and exercise by any Governor of Delaware in any future declared emergency arising from a pandemic or otherwise.

4. The Delaware COVID-19 pandemic emergency was declared by the Defendant Governor on March 13, 2020, and lasted until he terminated it 16 months later on July 13, 2021. With no overlay of emergency, undue haste, or threat of immediate deadly disease, this Court now can carefully analyze and declare the meaning of Art. I, § 1, which as written, without exception, absolutely protects the right to religious worship and practice in the time of any emergency and also prohibits favoring certain religious beliefs and practices over others.

5. In many respects Article I of the Delaware Constitution of 1897, known as the Delaware Bill of Rights, has been interpreted to be more expansive and protective of individual liberty and freedom than comparable provisions of the

federal Bill of Rights and the Fourteenth Amendment to the U.S. Constitution. This case squarely presents the specific question of whether the 128 words addressing religious liberty and worship contained in Art. I, § 1, along with the additional 23 related words also addressing religious worship and liberty in the Preamble of the Delaware Constitution (hereinafter “Preamble”), are more protective than or simply coextensive with the mere 16 words found in the Free Exercise and Establishment Clauses of the First Amendment to the U.S. Constitution.

B. Construction #1 - Plain Meaning - Absolute Protection

6. The framers of the Delaware Constitution described the religious freedoms that citizens are entitled to in greater detail than was given in the U.S. Constitution. They used the strongest possible language, written in absolute terms, to protect those freedoms. The construction of Art. I, § 1 addressed in this case is an absolute one, as required by its plain terms, and can be summarized as follows:

No power shall ever be "vested in or assumed by any magistrate" to “interfere with or in any manner control the rights of conscience in the free exercise of religious worship” or to "prefer” the "modes of worship" of one religion over another.

C. Construction #2 - Strict Scrutiny - Compelling State Interest

7. Alternatively, should the Court decide that Art. I, § 1 is not always to be

construed and interpreted absolutely, Plaintiff urges that the appropriate construction is to restore the compelling state interest test as set forth in Sherbert v. Verner, 374 U.S. 398 (1963), and Wisconsin v. Yoder, 406 U.S. 205 (1972),² and to guarantee this application even in cases where neutral laws of general applicability affect the free exercise of religion.

8. The test urged is that Government shall not “substantially burden” a person’s exercise of religion, even if the burden results from a rule of general applicability, except that Government may “substantially burden” a person’s exercise of religion only if it 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.

D. Construction #3 - Bare Minimum Floor of Federal First Amendment Law

9. Finally, and alternatively, even if the Court declines to apply the plain absolute terms of Art. I, § 1 and also declines to apply the traditional strict scrutiny regime of Sherbert and Yoder to the actions of the Defendant in this case, it nevertheless should apply the current iteration of the federal tests, the minimum floor which is required by the First Amendment.

10. For the Free Exercise Clause, this is set forth in Employ. Div. v. Smith,

² See Fulton v. City of Philadelphia, - U.S. -, 141 S.Ct. 1868, 1884-1926 (2021) (Alito, J. concurring).

494 U.S. 872 (1990), and Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 523 (1993), which require, *inter alia*, the following:

- A law which burdens religious liberty, alone, and fails one of the interrelated requirements of neutrality or general applicability, receives strict scrutiny review, but will otherwise receive rational basis review;
- A law which burdens religious liberty, while at the same time infringing other protected constitutional rights – such as freedom of speech, peaceable assembly, association or equal protection, among others – receives strict scrutiny review.

11. For the Establishment Clause, this is set forth across in a slew of cases prohibiting excessive government entanglement with religion, see, e.g., Am. Legion v. Am. Humanist Ass'n, 139 S.Ct. 2067, 2081 n.16 (2019) (surveying categories of cases), and id. at 2078–79 (addressing the much maligned but still governing three part federal test of Lemon v. Kurtzman, 403 U. S. 602 (1971)), which make clear a state actor may not:

- “force []or influence a person ... to remain away from church against his will;”
- “punish[]” a person “for church attendance;”
- “participate in the affairs of any religious organizations;”
- “set up a church;” or
- “pass laws which aid one religion ... or prefer one religion over another;”)

Everson v. Bd. of Educ. of Ewing Twp., 330 U.S. 1, 15-16 (1947).

E. General Relief Requested

12. Aside from nominal money damages, and declaratory relief, Plaintiff primarily seeks a permanent injunction against the Governor and his successors barring them in any future emergency from: (1) prohibiting assembling on Sunday or any other day of the week for in person religious worship or setting any occupancy limit on that assembly; (2) directing how speech, preaching, and teaching from the pulpit is to occur; (3) prohibiting singing in worship of God, individually or as a group; (4) prohibiting attendance of worshipers based on age, underlying health condition, or any other personal characteristic; (5) prohibiting Baptism or directing how the ritual is to be conducted; (6) prohibiting the Lord's Supper or directing how the ritual is to be conducted; and (7) expressing preferences or favoritism for the practices of one religion over another.

II. THE PARTIES

A. Plaintiff

1. Rev. David Landow

13. Plaintiff Rev. David W. Landow ("Rev. Landow") is a Christian and a pastor in Wilmington, Delaware.

14. Rev. Landow has served as a pastor at Emmanuel Orthodox Presbyterian Church in Wilmington, DE, since 2014. He holds a Master of

Divinity (M.Div) Degree from Westminster Theological Seminary in Glenside, PA, and a Bachelor of Arts (BA) Degree in History from Hillsdale College in Hillsdale, MI. He has over eight years of full-time ministry experience, as well as four years of part-time ministry experience while in the Seminary.

2. Emmanuel Orthodox Presbyterian Church

15. Emmanuel Orthodox Presbyterian Church is a member of The Orthodox Presbyterian Church religious denomination which was founded on June 11, 1936, in the aftermath of the fundamentalist-modernist controversy, under the leadership of J. Gresham Machen (longtime professor of New Testament at Princeton Theological Seminary, who also founded Westminster Theological Seminary in 1929). With the infiltration of theological liberalism, the mainline Presbyterian Church in the USA had departed from historic Christianity, including ordaining ministers who rejected doctrines such as the inspiration and authority of Scripture, the virgin birth of Christ, and the substitutionary atonement. Originally calling itself the Presbyterian Church of America, the young church was forced by the threat of a lawsuit to change its name in 1939, and it adopted the name Orthodox Presbyterian Church (“OPC”).

16. In nearly eight decades since its founding, the OPC has slowly grown to over 30,000 members in over 300 churches throughout the United States and Canada. It has been vigorous in its defense and propagation of the historic

Reformed faith as expressed in the Westminster Confession of Faith and Catechisms. The church's efforts in worldwide outreach are conducted largely through three denominational standing committees: foreign missions, home missions and church extension, and Christian education. The OPC recognizes other churches of like faith and practice and is a member of the North American Presbyterian and Reformed Council (NAPARC) and the International Conference of Reformed Churches (ICRC).

17. The membership role of the church lists 165 members.

18. Roughly 34% are 65 years old or older.

19. Its two normal Sunday services are at 9:30 a.m. and at 6:00 p.m.

20. The Lord's Supper (or Communion service), is regularly celebrated to comply with the command of Jesus Christ to "this do in remembrance of me."

Luke 22:17-20, 1 Corinthians 11:23-26 (KJV).³

21. Baptisms are held on a regular basis to comply with the command of the Scriptures. "All authority in heaven and on earth has been given to me. Go therefore and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, teaching them to observe all that I have commanded you." Matt. 28:18-20 (ESV).

³Throughout this Verified Complaint, Biblical quotations will be taken from either the King James Version (KJV) or the English Standard Version (ESV).

3. Pastor Landow’ Sincerely Held Central Religious Beliefs

22. Pastor Landow has central sincerely held religious beliefs that Scripture is the infallible, inerrant word of God, and that he and his congregation are to follow its teachings.

23. Pastor Landow has central sincerely held religious beliefs, rooted in Scripture’s commands (*e.g.*, Hebrews 10:25 KJV), that followers of Jesus Christ are not to forsake the assembling of themselves together and that they are to do so even more in times of peril and crisis. Indeed, the entire purpose of the Church (in Greek “ekklesia,” meaning “assembly”) is to “assemble together” Christians to worship Almighty God in accord with the Fourth Commandment.

24. Pastor Landow is also under Scriptural commands to celebrate the Lord’s Supper, to baptize believers and covenant children, to teach, preach, and receive religious teaching weekly, to pray communally, to sing in communal worship of God every Sunday, and to deny no one entrance to the church.

25. By the faith, doctrine, and practice of his Church, Pastor Landow is required to assemble his church congregation weekly on Sunday to worship God and for him to teach and preach from the pulpit of the Church to the members of the Church. “And they devoted themselves to the apostles’ teaching and to fellowship, to the breaking of bread and the prayers.” Acts 2:42 (ESV).

4. His Non-Monetary Injuries

26. The Governor's Orders herein, on their face and as applied, targeted Plaintiff's central sincerely held religious beliefs, exercise, and practice and substantially interfered with them by prohibiting all religious worship, exercise, and practice.

B. Defendant

27. John C. Carney currently is the duly elected second term Governor of the State of Delaware having assumed office in January 2017. He is sued in his individual capacity for nominal money damages of one dollar and for compensatory damages and in his official capacity for injunctive relief binding on him and his successors.

III. JURISDICTION

A. In General

28. This Court has general equitable jurisdiction under 10 Del.C. § 341 and Del. Const. Art. IV, § 10 because permanent injunctive relief is sought under Count I for violations of the Delaware Bill of Rights and concurrent jurisdiction under 42 U.S.C. § 1983 because permanent injunctive relief is sought under the remaining Counts for violations of the First and Fourteenth Amendments to the U.S. Constitution. See Light & Power Const. Co. v. McConnell, 181 A.2d 86, 91 (Del. Ch. 1962) (in a case against the State of Delaware and various public

officials, rejecting a claim that the plaintiff “ha[d] failed to show irreparable damages or the lack of an adequate remedy at law” when he brought “an action to enforce a law binding on public authority” and finding that the “plaintiff is entitled to equitable relief” and so granting the preliminary injunction); Kuhn Const. Co. v. State, 366 A.2d 1209, 1214-15 (Del. Ch. 1976) (holding it “has long since been settled” that a plaintiff taxpayer may “maintain [an] action” to “enforce a law binding on a public authority” and granting a permanent injunction against the State).

B. Mootness and Ripeness

29. The case is ripe for judicial resolution for multiple reasons. Aside from permanent future injunctive relief on a full record, this civil dispute also seeks money damages and declaratory relief for accomplished past constitutional torts and injuries.

1. Money Damages Are Sought.

30. First, this case seeks, among other things, money damages for past wrongful conduct. “A case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party.” Knox v. Serv. Emp. Int’l. Union, Local 1000, 567 U.S. 298, 307 (2012) (internal punctuation omitted); see, e.g. State Farm Mut. Auto. Ins. Co. v. Davis, 80 A.3d 628, 632 (Del. 2013) (“Mootness arises when controversy between the parties no longer exists such that

a court can no longer grant relief in the matter.”). “As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot.” Id. at 307-08 (internal punctuation omitted). Money damages are such an interest, and the injuries Plaintiff suffered are set out below in the Damages section of this Verified Complaint.

2. Material Facts Are Static.

31. Second, this claim is not based on uncertain or contingent events that may not occur or where future events may obviate the need for judicial intervention. Litigation over these issues is unavoidable, and the material facts are static. XI Specialty Ins. Co. v. WMI Liquidating Tr., 93 A.3d 1208, 1217 (Del. 2014).

3. The Voluntary Cessation of Illegal Conduct Doctrine Applies.

32. Third, this case also is not moot because both the “voluntary cessation of illegal conduct” and the “capable of repetition but evading review” doctrines under mootness apply.

33. Under the “voluntary cessation of illegal conduct doctrine,” as detailed below, when the federal court in the case of Bullock v. Carney, C.A. No. 20-674-CFC (D. Del.), was ready to rule, declare the law and enjoin the illegal conduct, Defendant twice reversed his illegal Orders and abandoned them. This was “opportunistically timed to avoid an unfavorable adjudication.” County of Butler

v. Governor of Pennsylvania, 8 F.4th 226, 230 (3d Cir. 2021). There is no reason to believe that this was done in good faith, but instead it is a common litigation tactic of the attorneys for the Defendant.

4. The Capable of Repetition But Evading Review Doctrine Applies.

34. Under the alternate “capable of repetition but evading review” doctrine, the Governor in his settlement of the prior case of Bullock v. Carney, reserved the rights to impose “neutral rules of general applicability” that “may have an effect on houses of worship” in the future and “to take any enforcement action against a house of worship or affiliated religious ministry as authorized by law.”

Consequently, instead of granting Pastor Landow absolute protection in the future, Defendant again can return to his prior illegal ways described herein, such as a shut down of Sunday religious worship through the use of a neutral rule of general applicability. Thus, he retains the ability to go back to his old approach of interference with the Christian faith at any time in the future as long as he also tries to limit other secular assemblies. Absent a legally enforceable mechanism, such as a declaratory judgment or a permanent injunction, he is free to resume his prior illegal ways at any time.

35. Unlike in nearby Pennsylvania, there has been no amendment to the Delaware Constitution restricting the Governor’s authority and emergency powers in a future pandemic. And, unlike in Pennsylvania, the Delaware General

Assembly also has not restricted the Governors’s future statutory powers in any way either. See Instead County of Butler v. Governor of PA, 8 F.4th 226, 230 (3d Cir. 2021)(where the governor “has been stripped of his power to unilaterally act in connection with this pandemic” and the “law no longer provides [him] a mechanism to ‘repeat the alleged harm.’”).

36. On July 12, 2021, Defendant also signed an Order Terminating the State of Emergency and reserved his former powers for the future. At the same time he continued to exercise some emergency powers by signing a narrower new Public Health Emergency Order, “a limited State of Public Health Emergency declaration,” authorizing the Division of Public Health (DPH) to direct COVID-19 vaccination, treatment, and mitigation measures to contain the spread of COVID-19. Moreover, “upon request of local authorities,” the Delaware National Guard also was empowered to act in taking “responsive actions,” whenever needed, together with the Director of the Delaware Emergency Management Agency (DEMA) and the Secretary of the Department of Safety and Homeland Security (DSHS).

37. Defendant also in writing noted that his earlier emergency powers were no longer needed at that time “to the extent that the conditions necessitating continuance of the COVID-19 State of Emergency no longer exist,” alluding to the possibility of conditions changing for the worse in the future when Emergency

Orders would be needed again.

38. On July 13, 2021, in an online Town Hall meeting the Governor also made several observations regarding the possible need to reassert emergency powers again in the COVID-19 context. At 10:26 of the video, on the need to continue vaccinating everyone, he noted it was because "we can⁴ have an outbreak." And later at 31:10, in discussing the Delta variant, the question was asked of the Governor, "if the upward trend continues, could you consider reinstating some of the restrictions, such as the mask mandate, or any other capacity restrictions?" His reply included saying, "Yeah, . . . we can't afford to go backward," that masks are more of a recommendation if you are not vaccinated, he hoped that "we are not going to be able to go back, unless it gets really bad," and "we will keep our eyes on what the condition is on the ground."

39. If a future pandemic emergency is declared by the Defendant Governor or any future Governor of Delaware, Pastor Landow intends to engage in a course of conduct invoking various interests protected by Art. I, § 1 and the First and Fourteenth Amendments to the U.S. Constitution. Since such acts can be proscribed by the Governor's Orders and related criminal law and presently are punishable by six months imprisonment, the threat of prosecution for his future

⁴ The audio is unclear here, the word "can" may instead be the word "could."

conduct is credible.

40. Consequently, there is a reasonable expectation that the same complaining party will be subject to the same action or illegal orders once again. And, there will be no opportunity to fully litigate the complex constitutional issues in this case in a hurried emergency relief context.

5. The Public Importance Doctrine Applies

41. The “public importance” doctrine also applies to our case. See State Farm Mut. Auto. Ins. Co. v. Davis, 80 A.3d 628, 632–33 (Del. 2013); Gen. Motors Corp. v. New Castle Cnty., 701 A.2d 819, 824 n.5 (Del. 1997).

42. As already noted above, and set forth in much greater detail in Count I below, this case concerns the first freedom – religious freedom – of the Delaware Bill of Rights. The history of these 128 words, and the additional 23 related words in the Preamble, trace an unbroken path through Delaware’s Constitutions back to 1776.

43. As the U.S. Supreme Court recently held concerning the mere 16 words in the First Amendment protecting the federal constitutional right to religious worship and liberty, their loss “for even minimal periods of time, unquestionably constitutes irreparable injury.” Roman Cath. Diocese of Brooklyn v. Cuomo, 141 S.Ct. 63, 67 (2020).

44. The facts below detail more than just a “minimal” deprivation of such

treasured protections and rights under both the Delaware and U.S. Constitutions.

45. Additionally, the actions and protected petitions of Defendant from nearly 170 church pastors all across Delaware also speaks to the public importance of the issues this lawsuit presents.

6. Declaratory Relief Is Appropriate.

46. Fourth, finally, since the relief sought herein includes a “declaratory judgment about the [prior] practice,” this factor weighs against any finding of mootness also. Fields v. Speaker of Pennsylvania House of Representatives, 936 F.3d 142, 162 (3d Cir. 2019).

IV. FACTS GIVING RISE TO THE ACTION

A. The Substantial Impacts of the Governor’s Orders on the Christian Faith

1. Rev. Landow Cautiously Cares for the Bodies and Souls of His Church

Members

47. If the Defendant had simply made wise suggestions, they could be fairly evaluated. Rev. Landow, his Christian Denomination, and its churches care deeply for the physical well-being of their members and go to great lengths and have crafted careful policies to protect them. Not to denigrate businesses, but Rev. Landow cares more for the well-being of his congregation than a business cares for its customers because members of the congregation are his brothers and sisters in Christ. However, the Governor’s mandates gave more leeway and flexibility to

businesses than they did for churches. Apparently he trusted businesses, museums, and performing arts venues to figure out how to care for their customers more than he trusted churches to care for their spiritual families.

48. As the church Pastor, Rev. Landow has a God-given duty to not just care for his congregation's physical bodies but also their eternal souls. Every time Rev. Landow steps into the pulpit, he is deeply aware that this might be the last time he has to preach the Gospel and administer the sacraments to each of the individuals in the room. He often thinks of all the people he has preached the Gospel to on a Sunday only to later have to officiate at their funeral on a Saturday. The worship of God is one of the primary places we prepare for death. Rev. Landow is a pastor, not a lawyer, but he understands the issue of irreparable harm here with the continuing limits the Governor placed on religious worship. What could be more harmful than spending eternity in hell?

2. The Sunday Worship Service

49. Christianity believes that the Fourth Commandment given by God to Moses on Mt. Sinai requires that God be worshiped weekly. "Remember the Sabbath day, to keep it holy." Exodus 20: 8 (KJV).

50. Christianity requires an assembled church. For two millennia, with rare exception, Christians have met together in-person. The bodily assembly of the church, rooted in the scriptural command of believers "[n]ot forsaking the

assembling of ourselves together, as the manner of some is; but exhorting one another: and so much the more, as ye see the day approaching," (Hebrews 10:25 KJV), is of particular importance and significance for Christians generally.

51. For more than 2,000 years, Christians have gathered physically each Sunday throughout the year in observance of Christ's resurrection from the dead on the first day of the week, and the physical gathering of the church is central to that celebration. Indeed, the Greek word translated as "church" in our English versions of the Christian scriptures is "ekklesia," which literally means "assembly." A. T. Robertson, A Grammar Of The Greek New Testament In Light of Historical Research (3d ed. 1919).

52. This gathering for worship is not an optional activity for Rev. Landow or for Christians, it is required. The Fourth Commandment handed down from God to Moses requires Sabbath worship of the Creator: "Remember the Sabbath Day, to keep it Holy." Exodus 20:8 (KJV) After the death and resurrection of Jesus Christ, the author of the book of Hebrews reminded believers, "And let us consider how to stir up one another to love and good works, **not neglecting to meet together**, as is the habit of some, but encouraging one another, and all the more as you see the Day drawing near" Heb. 10:25 (ESV)(Emphasis added).

53. Even in times of "pestilence," Christians are to assemble and worship God. "If disaster comes upon us, the sword, judgment, or pestilence, or famine,

we will stand before this house and before you – for your name is in this house – and cry out to you in our affliction, and you will hear and save.” 2 Chronicles 20:9 (KJV).

54. As with other communities of Christian faith around the country, Rev. Landow believes that a central part of following Christ is worshiping together in the same physical space. Again, the Christian scriptures exhort believers in "not forsaking the assembling of ourselves together." Hebrews 10:25 (ESV).

55. In order for Plaintiff to be Ordained in the Orthodox Presbyterian Church and to function as the Pastor of Emmanuel Orthodox Presbyterian Church he must follow the Biblical mandates regarding Worship. These are explained in what are known as the “Standards,” which include the Westminster Confession of Faith and the Directory of Public Worship.

56. The Westminster Confession of Faith was adopted in 1646. After the Revolutionary War, when the Presbyterian Church in the United States was formed, it adopted the Westminster Standards as containing the system of doctrine taught in the Holy Scriptures. The American Church, however, revised certain sections removing the civil magistrate (i.e. the state) from involvement in Church matters. The relevant Sections regarding Worship are as follows:

“5. The reading of Scriptures with godly fear, the sound preaching and conscionable hearing of the Word . . . , singing of psalms with grace in the heart, as also the due administration and

worthy receiving of the sacraments instituted by Christ, are all parts of ordinary religious worship of God

8. This Sabbath is then kept holy unto the Lord, when men . . . do not observe a holy rest all day from their own works, words and thoughts about their worldly employments and recreations, but also are taken up, the whole time, in the **public** and private exercise of his worship” (Emphasis added).

57. The Public Directory of Worship (the “Directory”), which was first adopted in 1645, was readopted with revisions by the Orthodox Presbyterian Church in 1936. It goes into even greater detail as to how public worship is to be conducted.

58. Concerning the Sabbath and public worship the Directory provides as follows.

59. “The Lord's Day is a day of holy convocation, the day on which the Lord calls his people to assemble for public worship. . . . the Lord calls the whole congregation of each local church to the sacred duty and high privilege of assembling for public worship each Lord's Day. He expressly commands his people to draw near to him, not forsaking the assembling of themselves together.” (Directory 1,A.4).

60. “Because God's people worship, not as an aggregation of individuals, but as a congregation of those who are members of one another in Christ, public worship is to be conducted as a corporate activity in which all the members

participate as the body of Christ.” (Directory 1, B.4).

61. Rev. Landow has a sincerely held central religious belief that physical, corporate gathering of believers each Sunday is an essential element of religious worship commanded by the Lord. Plaintiff and his church members from March 13, 2020, and the start of the pandemic Emergency declared by Defendant desired to gather 29 times for a physical, corporate gathering of believers twice each Sunday and once on Good Friday - and would have done so but for those actions of the Defendant that are the subject of this Verified Complaint.

62. Rev. Landow has a sincerely held central religious belief that online services and drive-in services, ordered by the Governor as a particular mode of permitted worship, do not meet the Lord's requirement that the church meet together in person on Sunday for corporate worship. He believes that online and drive-in church services are not substitutes for real in-person corporate worship.

63. Rev. Landow by faith, doctrine and practice believes that “church” cannot truly be livestreamed because a livestream is inherently virtual, and not a pure physical gathering. Christianity is a physical religion rooted in the importance and significance of physical presence with one another. His faith is grounded in the belief that the eternal God united himself to human flesh in the incarnation and came to physically dwell with us. As the Gospel of John says, “And the Word became flesh and dwelt among us, and we have seen his glory,

glory as of the only Son from the Father, full of grace and truth.” John 1:14 (ESV). This Jesus in human flesh was crucified, he died, and his body was buried for our sins. On the third day he was physically raised from the dead. Because he physically was raised from the dead, Rev. Landow believes that those who are united to him by faith will be physically raised from the dead as well. After his resurrection, Jesus ascended bodily into heaven, and he is even now at the right hand of God. When congregants physically gather for worship, they are anticipating and looking forward to the resurrection of the dead and their physical presence with Jesus and other believers in heaven. Being physically separated from one another, as the Governor ordered, far from being a taste of heaven, was actually a taste of hell.

3. Religious Speech From the Pulpit

64. Rev. Landow has a sincerely held central religious belief that speech, preaching and teaching from the pulpit is required on a weekly basis during worship. The foundation for this belief is found in the Holy Bible which records Christian worship from the first century when it states: “And they devoted themselves to the apostles’ teaching and to fellowship, to the breaking of bread and the prayers.” Acts 2:42 (ESV). The Governor denied this speech from the pulpit on a weekly basis with his Orders.

65. Rev. Landow, his denomination and many other Protestant churches

have long held that the public preaching of the Word of God in the assembled congregation is an ordinary means of grace. As Paul says in the letter to the Romans, “How then will they call on him in whom they have not believed? And how are they to believe in him of whom they have never heard? And how are they to hear without someone preaching?” Rom. 10:14 (ESV). Preaching in the gathered worship service is one of the primary ways of bringing people to salvation and eternal life with God after they die.

66. The actual event of assembling for worship, teaching, prayer, preaching and communal gathering is where God has promised to send his Holy Spirit in a way that is distinct from reading a sermon, listening to a recording, or watching a livestream. Matt. 18:20, Acts 2:40-47 (KJV). Although those things can be good and beneficial, they are not what we as Christians are commanded by God to do.

67. Preaching, as a Spirit-filled event is at the heart of Rev. Landow’s worship, but the Governor’s mandate meddled in how ministers may preach by dictating the length of services and requiring Rev. Landow to turn his back to his congregation and preach to the back wall of the church sanctuary.

68. In addition to interfering with the free exercise of religious worship, the Governor’s Orders which imposed a limit of just one hour for the complete religious service, gave preference to certain types of denominations and churches over others by giving preference to certain “modes of worship” in violation of Art.

I, § 1. Many of his Orders were more easily adopted by some Christian traditions over others. For example, the mandates limit services to one hour. In some traditions, sermons regularly run 30 to 45 minutes, and it is more common for ministers to write out their sermons. But as stated in other traditions, “it takes us an hour to get started to preach!” The mandates show a marked favoring of one form of worship and make others liable to criminal prosecution, all while a performing arts concert was not limited to one hour.

69. This was meddling at the very heart of Christian worship which is forbidden by Article I because it was dictating certain “modes of worship” By keeping people away from the preaching of the word of God under the threat of criminal penalty, the Defendant again denied protected religious freedom.

4. Singing

70. Rev. Landow has a sincerely held central religious belief that group singing must be a part of worship on every occasion. He carefully selects the Psalms and hymns to be sung in each service as appropriate responses to the Word of God. Worship is not something which is to be passively observed or consumed but is to be actively responded to by the congregation. Singing is one of the primary ways the congregation is called to respond to the reading and preaching of the Word. From its very beginning, congregational singing has been a fundamental element of Christian worship. The Apostle Paul again commanded:

“Let the word of Christ dwell in you richly; teaching and admonishing one another in all wisdom, **singing psalms and hymns and spiritual songs** with thankfulness in your hearts to God.” Colossians 3:16 (ESV)(emphasis added).

71. This merely continued the requirement of song in worship found in the commands in Old Testament Israel: “Let us come into his presence with thanksgiving; let us make a joyful noise to him with songs of praise.” Psalm 95:2 (ESV). “Sing to the Lord.” Jeremiah 20:13 (ESV). “Oh come, let us sing to the Lord.” Psalm 95:1 (ESV). “Come into his presence with singing.” Psalm 100:2 (ESV). The Governor denied this speech on a weekly basis with his Orders which prohibited religious singing individually or in a choir.

72. The Directory is very specific on the requirement of congregational singing.

2. Congregational Singing

a. Congregational singing is a duty and privilege to be practiced and cultivated in all the churches. Let every member of the church take part in this act of worship. God's people should sing, not merely with the lips, but with understanding and with grace in their hearts, making melody to the Lord.

b. As public worship is for the praise and glory of God and the building up of the saints, not for the entertainment of the congregation nor the praise of man, the character of the songs used therein is to befit the nature of God and the purpose of worship.

c. Congregations do well to sing the metrical versions or other musical settings of the Psalms frequently in public worship.

Congregations also do well to sing hymns of praise that respond to the full scope of divine revelation.

d. In the choice of song for public worship, great care must be taken that all the materials of song are fully in accord with the Scriptures. The words are to be suitable for the worship of God and the tunes are to be appropriate to the meaning of the words and to the occasion of public worship. Care should be taken to the end that the songs chosen will express those specific truths and sentiments which are appropriate at the time of their use in the worship service.

e. Musical gifts are properly used in public worship to assist the congregation in its worship of God. They may not be used for the praise or applause of men. No person may take a special part in the musical service unless he is a professing Christian who adorns his profession with a godly walk, or who is a baptized covenant child whose conduct is appropriate to his status. (Directory II, B.2)

73. This gathering together to sing with people is one of the fundamental things that makes the church the church. Congregational singing, encouraging one another by being gathered together with brothers and sisters in Christ, is one of the ordinary means of God's mercy and grace. The Governor telling certain people and certain age groups that they may not gather to sing threatens the spiritual health of those members of the church.

5. Welcoming the Lost, Elderly, Sick, and All Others

74. Rev. Landow has a sincerely held central religious belief that no one should be denied the opportunity to participate in the Sunday worship service.

75. As the Apostle Paul taught in his letter to the Galatians:

So in Christ Jesus you are all children of God through

faith, for all of you who were baptized into Christ have clothed yourselves with Christ. There is neither Jew nor Gentile, neither slave nor free, nor is there male and female, for you are all one in Christ Jesus.

Galatians 3:26-28 (ESV).

76. In the book of James, the Churches also are commanded not to make distinctions between people, such as between the poor and the rich:

My brothers, show no partiality as you hold the faith in our Lord Jesus Christ, the Lord of glory... [When you say] You sit here in a good place,” while you say to the poor man, “You stand over there,” or, “Sit down at my feet,” have you not then made distinctions among yourselves and become judges with evil thoughts?

James 2:1,3-4 (ESV).

77. The Directory affirms this obligation to keep the church doors open to everyone and never to exclude anyone. “The unity and catholicity of the covenant people are to be manifest in public worship. Accordingly, the service is to be conducted in a manner that enables and expects all the members of the covenant community—male and female, old and young, rich and poor, educated and uneducated, healthy and infirm, people from every race and nation—to worship together.” (Directory I, B.4).

78. Yet the Governor’s Orders required Plaintiff to post signage at each public entrance which stated: “Do not enter if: you are at high-risk for contracting COVID-19 (65 and older or have underlying health conditions

identified by the CDC as higher risk).”

79. The Governor’s mandates required Rev. Landow to discriminate against whole groups of people within his congregation saying, “you sit at home, and you may come to church.”

80. All of this was a grievous violation of his conscience for Rev. Landow to be required to turn away the elderly, sick, or infirm per the Orders of the Governor.

81. Any segregation based on age, asthma, any underlying medical condition, weight, etc., is abhorrent to God.

82. For Rev. Landow to discriminate against anyone is wrong, as **all** men and women are called to frequently assemble together for the public worship of God.

83. The Church, the assembly, is made up of people from all age groups and physical fitness. Someone with asthma was not permitted to attend worship. But that same person was permitted to go to a sit-down restaurant, attend a concert, go to Target, or go to work, but he could not come to church. They could go to the store to buy physical food, but the Governor banned them from attending church to be given spiritual food.

6. Baptism

84. Rev. Landow has a central sincerely held religious belief that water

Baptism is a physical requirement of his Christian faith and church.

85. This is something Jesus himself commanded us to do. “And Jesus came and said to them, ‘All authority in heaven and on earth has been given to me. Go therefore and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, teaching them to observe all that I have commanded you’” Matt. 28:18–20; accord Matt. 3: 13-17; Mark 1:9-10; John 3:22-23; Acts 8: 12, 36-38 (ESV).

86. Baptism, whether of an adult or an infant, requires physical presence and touch. In order to baptize someone in water, you need to touch them.

87. The mode of baptism has unfortunately been something which has divided Christians over the centuries, and the State taking to itself to say whether or not a minister can hold a candidate for baptism as Defendant ordered is a serious infringement on the freedom of worship and preferring some “modes of worship” over others. Mandating how people may be baptized was a serious infringement of religious liberty by the Defendant.

88. The Defendant also preferred some modes of worship over others by permitting Jews to be circumcised while prohibiting Christian baptisms.

7. The Lord’s Supper

89. The Lord’s Supper (or Communion) is one of the central elements of corporate worship and is a primary means of grace. It is commanded by Jesus

Christ to be celebrated frequently. “Do this in remembrance of me.” (Luke 22:19 ESV). Pastor Landow celebrates the Lord’s Supper at least twice a month with his congregation and this practice was denied to Pastor Landow and his congregation by Governor Carney.

90. The Lord’s Supper is a shared meal, instituted by Christ himself. “And he took bread, and when he had given thanks, he broke it and gave it to them, saying, ‘This is my body, which is given for you. Do this in remembrance of me.’” Luke 22:19 (ESV). This regular gathering to partake of the Lord’s Supper characterized Christian worship from the very beginning. The Apostle Paul told the church in Corinth:

“For I received from the Lord what I also delivered to you, that the Lord Jesus on the night when he was betrayed took bread, and when he had given thanks, he broke it, and said, ‘This is my body, which is for you. Do this in remembrance of me.’ In the same way also he took the cup, after supper, saying, ‘This cup is the new covenant in my blood. Do this, as often as you drink it, in remembrance of me.’ For as often as you eat this bread and drink the cup, you proclaim the Lord’s death until he comes” 1 Cor. 11:23–26 (ESV).

91. The opportunity for Rev. Landow and his congregation to celebrate the Lord’s Supper on a normal regular basis was denied by Governor Carney.

92. The Lord’s Supper, as a physical sacrament and a shared meal, is not something which can be practiced at a distance or over a livestream. Rev. Landow’s denomination, his local church members, and Plaintiff himself, together

with many Protestant denominations and churches, do not believe that the Lord's Supper should be celebrated privately because of its nature as a communal meal.

93. Unfortunately, the way to properly celebrate the Lord's Supper has been a contentious issue within various Christian traditions, and the State taking it upon itself to dictate how the Lord's Supper may or may not be administered strikes at the very core of Christian worship. The Governor's mandates go into excruciating detail about how the Lord's Supper may and may not be celebrated.

94. This was interfering with the free exercise and practice of religion and dictating certain "modes of worship" in violation of Article 1. Telling certain age groups and people with certain health risks that they may not gather to partake of the Lord's Supper threatens their spiritual health by depriving them of a primary means of grace, causing them irreparable harm.

B. Chronological Overview and Brief Summary of Defendant's Unconstitutional Actions

95. When the Covid-19 pandemic hit, it would appear that both the Delaware and U.S. Constitutions were forgotten by the Defendant Governor of Delaware.

96. As noted above, the Delaware COVID-19 pandemic emergency was declared by the Defendant Governor on March 12, 2020, effective March 13, 2020, and lasted until he terminated it 16 months later on July 13, 2021.

97. At the beginning of the pandemic emergency, Defendant imposed a state-wide lockdown.

98. Soon after, the Defendant Governor designated 237 categories of “essential” businesses that could operate despite his state-wide lockdown.

99. Defendant allowed 236 of these categories – including liquor stores, big box stores, grocery stores and law firms – to operate at full capacity with no restrictions.

100. Only one of these 237 categories – religious worship in churches – was limited in capacity to 10 persons maximum no matter how large a church’s sanctuary.

101. In his own words broadcast across the Delaware media, Defendant Carney admitted the “effect[]” of his orders was a complete and total shutdown of religious worship in Delaware. Celebration of the Resurrection of Jesus Christ on Easter Sunday was criminalized, and the penalty for violation of his ban on religious worship was six months in state prison.

102. On May 13, 2020, attorney Thomas Neuberger sent a letter to Governor Carney on behalf of the Rev. Dr. Christopher Alan Bullock and other members of the Committee to Save Christmas. The letter noted that although good faith mistakes can happen in an emergency, more than two months had now passed, and the Governor’s ban on religious worship was clearly unconstitutional

under both the First and Fourteenth Amendments. Thomas Neuberger offered to assist the Governor in crafting new rules that respected treasured Constitutional freedoms while also protecting public health.

103. Five days later, on May 18, 2020, the Governor responded by doubling down and presenting Churches with a stark Hobson's choice: They could:

- continue to operate at 10 persons or less, in what he had already admitted was an effective shutdown of religious worship in Delaware; **or**
- they could open at 30% capacity if, and only if, they surrendered to him their sincerely held religious beliefs and allowed him to dictate both the form and content of their religious worship services, in at least 15 different ways, including:
 - Banning any and all religious services on 6 out of 7 days every week;
 - Banning persons age 65 or older from all Church attendance;
 - Banning Baptism;
 - Banning Communion;
 - Requiring that a "Do Not Enter" sign be posted on all doors banning those 65 or older and those with underlying health conditions;
 - Limiting the one day of worship services to 60 minutes maximum;
 - Banning all Church related ministries.

104. The next morning, on May 19th, counsel filed a federal lawsuit on behalf of Rev. Dr. Christopher Bullock personally in U.S. District Court for the District of Delaware, invoking the protections of the First Amendment's Free Exercise, Establishment and Free Speech Clauses, as well as the Equal Protection Clause of the Fourteenth Amendment. The case was later amended to add a count under Art. I, § 1 of the Delaware Constitution.

105. Upon being hauled into federal court and facing the pending threat of a temporary restraining order, Governor Carney – under the voluntary cessation doctrine to avoid the need for injunctive relief – abruptly changed his tune and began to backpedal, abandoning many of his previously ironclad religious restrictions so quickly that, at the marathon four hour court hearing which followed, then presiding U.S. District Judge, now Chief Judge, Colm Connolly observed --

I think that Pastor Bullock has succeeded already to a significant degree in that since the filing of the complaint, some legitimate issues that the complaint alleged respecting ... the constitutionality ... of the regulations then in place have been addressed and that we are now in a very different landscape than we were when the complaint was originally filed.

(Bullock , TRO Hrg. Tr. At 4, 5/28/20).

106. Governor Carney, however, dug in his heels and still obdurately refused to give up certain of his criminally enforced, targeted religious mandates.

One was that a Pastor wear a face-mask while preaching to his congregation and, if he refused, that he turn his back to his congregation and preach to the front sanctuary wall of his Church. In the carefully chosen words of one of the Governor's own lawyers, "the Governor's position is that a preacher must wear a mask or face shield while preaching, and if they cannot, then they should not face directly to the congregation when they are projecting their voice." (Id. at 38).

107. Of course, the Governor did not practice what he preached. For at least three months, from March through June of 2020, Governor Carney gave near daily press conferences to numerous members of the media and the public where he did not wear either a face mask or a face shield while speaking. He faced his audience at all times and spoke at length. He did not turn his back to the audience or to the cameras. He did not speak to the wall behind him.

108. Nor did other politicians in Delaware. For example, on June 1, 2020, then former Vice President, now President, Joseph R. Biden, Jr., spoke at an urban African-American church in downtown Wilmington, Delaware, to an audience of African-American pastors, including Rev. Dr. Bullock, and the media. While speaking, the President also did not wear either a face mask or a face shield while speaking. He faced his audience at all times and spoke at length. He did not turn his back to the audience or the cameras. He did not speak to the wall behind him.

109. For these and additional reasons, Chief Judge Connolly "was a bit

surprised that counsel for the Governor took the position that there is a requirement that the pastor wear the mask.” (Id. at 88).

110. Up to a June 2nd preliminary injunction hearing, Governor Carney refused to abandon his specifically mandated religious procedures, including a ban on holding or in any way touching a person during Baptisms in African-American Baptist Churches such as Rev. Dr. Bullock’s, and in all other Churches as well. In the Chief Judge’s words, the Governor’s rule “prescribes the manner in which a baptism is to be conducted, at least in part, and it has prohibitions about it, but it has got prescriptions.” (Bullock 6/2/20 tr. at 8).

111. In questioning five attorneys for the Governor, including the State Solicitor, Chief Judge Connolly asked –

I mean, let me ask the counsel for the Governor at the outset. Do you know of any other occasion in Delaware law or in any other law in the United States where specific procedures have been prescribed for baptisms in the way they have in the guidance that was issued pursuant to the modifications to the State of Emergency declaration?

The response from the Governor, “I do not.” (Bullock TRO Hr. Tr. at 7, 6/2/20).

112. In the Court’s incredulous words, “that the State not surprisingly is unable to point to any case ever or situation ever where a State has dictated how a baptism should be performed by a religious organization, that ought to tell you something.” (Id. at 10-11).

113. Relatedly, at the same time he targeted the Christian religious rite of Baptism, Governor Carney refused to extend his prohibitions on touching or holding to the religious rites of other of his more favored religious groups, such as circumcisions within the religious faith of Judaism, or other religious rites within, for example, the Muslim or Hindu faiths.

114. Governor Carney publicly defended his actions by claiming that he had relied upon his handpicked and preferred ‘Delaware Council of Faith-Based Partnerships,’ the Chairman of which was a Jewish Rabbi whose religious practices were left unmolested. Coincidentally, there were no clergy representatives of Evangelical Christianity on the Governor’s council of preferred faiths.

115. But yet again, Chief Judge Connolly was unimpressed by this defense which violated long established Establishment Clause principles, observing the legal “landscape changes drastically” when the Governor’s criminal mandates “treat Jewish circumcisions differently than Protestant baptisms.” (Id. at 28-29).

116. After the Court expressed its views, Governor Carney tentatively abandoned his many orders and other attacks on religious worship and retreated back to the very same First Amendment standards Rev. Dr. Bullock and the Committee to Save Christmas had urged on him in their May 13th letter, which the Governor had earlier ignored.

117. With the offending Orders governing religious rituals abandoned, on June 4th the Court under the mootness doctrine denied the request for a preliminary injunction.

118. Many months of legal wrangling followed. The Governor urged the Court and Rev. Dr. Bullock to ‘trust him,’ that he had learned his lesson and he would not repeat his previous mistakes. But knowing the nature of pie-crust promises made by politicians, Rev. Dr. Bullock fought on.

119. Months later, on the eve of Governor Carney’s deposition, with a trial date scheduled, the case settled. In exchange for Rev. Dr. Bullock dropping his lawsuit, the Governor agreed for the purposes of Rev. Dr. Bullock **only**: “not to impose restrictions that specifically target houses of worship,” including all of the restrictions challenged above; if he ever resumed using his earlier ‘Essential Businesses’ designation, that Delaware Churches would be designated as “Essential;” and that the First Amendment does not take a vacation during a pandemic and he would stick to its Constitutional standards in the future.

120. The legal position taken by Rev. Dr. Bullock and his counsel in the lawsuit was ultimately vindicated by the U.S. Supreme Court in Roman Catholic Diocese of Brooklyn v. Cuomo, 592 U.S. --, 141 S.Ct. 63 (2020) (per curiam); South Bay United Pentecostal Church v. Newsom, 592 U.S. --, 141 S.Ct. 716 (2021); Tandon v. Newsom, 592 U.S. --, 141 S.Ct. 1294, 1296-98 (2021) (per

curiam). Additionally, in both High Plains Harvest Church v. Polis, 141 S.Ct. 527 (2020), and Harvest Rock Church, Inc. v. Newsom, 141 S.Ct. 889 (2020), the Supreme Court vacated all or some of the lower court limits on religious worship and remanded for consideration in light of Roman Catholic Diocese of Brooklyn.

C. The Governor's Many Orders

1. March 12th - May 14th, 2020

121. Defendant Governor Carney's March 12th Declaration of a next day State of Emergency limited private gatherings to less than 100 persons. Governor Carney's March 13th State of Emergency and his many subsequent Orders are numerous (collectively, "Orders"), and can be found at <https://governor.delaware.gov/health-soe/>

122. In Chief Judge Connolly's words, these are "not a model of clarity" (Bullock , TRO Hrg. Tr. at 39, 5/28/20) and are "confusing in certain respects." (Bullock, TRO Hrg. Tr. at 5, 6/2/20); see also id. at 30 ("confusing") and 6 ("confusion").

123. Violation of any of his Orders are crimes punishable by six months in prison for any member of a faith community. 20 Del. C. § 3125.

124. In response to a direct question from Chief Judge Connolly in the earlier case for Pastor Bullock, the Delaware Department of Justice admitted on behalf of Governor Carney that all of these Orders, Modifications, Official

Guidance, and so forth “have the force and effect of the law.” (Bullock TRO Hrg. Tr. at 14).

125. His March 16th Order (First Modification) limited private gatherings to 50 or less people.

126. Then the Governor went into great specific detail in regulating how and when religious worship was to be conducted. In doing so, he engaged in the wholesale elimination of religious worship throughout the state, all in direct violation of the absolute rights provided in Article I by our forefathers.

127. Pursuant to his 9th and 10th Modification Orders, directives with the force of law were issued to all churches commanding how they were to conduct any permitted worship services as designed by the State. Here, the Governor virtually eliminated and prohibited in person religious worship in Delaware despite the plain language of Article I, which plainly stated that he had “no power [to] interfere with ... religious worship.”

Houses of worship must, whenever possible, conduct their activities from home or through remote audio or video services.

Houses of worship should conduct remote audio, video, or teleconference activities whenever possible.

If a house of worship cannot conduct its service remotely due to a lack of capability (technological or financial), then it must follow the Governor’s State of Emergency restrictions and the guidelines in this document.

No more than 10 individuals — including clergy, staff, and participants — may be present inside the Religious Facility during the service.

Follow social distancing guidelines.

However, the participants, clergy, and staff at Religious Facilities must adhere to the following requirements to protect public health, safety, and welfare:

No more than 10 individuals — including clergy, staff, and participants — may be present inside the Religious Facility during the service.

Participants may not interact physically with clergy, staff, or other participants.

This includes, but is not limited to, collecting donations by basket or plate.

Participants, clergy, and staff must:

Be at least six feet apart from one another at all times, except for participants that are part of the same household; and

Comply with all applicable guidance from the CDC and the Delaware Division of Public Health regarding social distancing.

*There must be **at least a four-hour gap** between the end of one in-person service and the beginning of the next in-person service. The Religious Facility should be cleaned between services. (Ex. A, at 1-2)(emphasis added).*

128. Under the limit of 10 persons in church, one service was allowed for one pastor and nine church members. Four hours of clean up was then required

before a second Sunday service could begin.

129. To allow 100 church members to worship would require 11 six hour intervals, ($100/9=11.1$) assuming just a two hour service, and a four hour clean up.

130. Six times 11 equals 66 hours to conduct one Sunday service for each member of just a 100 member congregation. But there are only 24 hours in a day. Consequently $66/24 = 2.75$ days of impossible non-stop services were required by one pastor to fulfill the needs of his or her congregation.

131. The Governor has publicly admitted in his press conferences, and also has been quoted in the Delaware media, as saying that the limit of ten to a Sunday worship service was, in effect, a complete shutdown and denial of the right to religious exercise and worship in Delaware. The Governor first admitted this on May 15, 2020, stating, “We just limited public gatherings to 10 or fewer, which effectively, for many of those places of worship meant that there wasn't a way for them to stay open.”

132. Meeting the needs of a small congregation of 100 was impossible under his orders, let alone the larger congregation of Rev. Landow.

133. In an unprecedented historic first, the regulations also advised that new forms of religious worship should be adopted:

Faith-based communities across the nation are moving their services online using live streaming, social media, Zoom, etc. Others are offering "drive-in" services.

Drive-in services will not violate the order if they adhere to the following:

People attending the service must remain in their vehicles at all times, but are permitted to open their windows halfway if the message of the church is being provided over loud-speaker.

Vehicles attending services may only include immediate family members who live in the same household.

No outdoor seating shall be permitted, including outdoor seating in an open bed of a vehicle.

Vehicles must remain at least 15 feet from each other (including side-to-side while parked).

Owners/operators of the property being used for drive-in services shall clearly mark spacing appropriate to identify 15 feet between cars.

No exchange of materials shall take place between attendees and each other or attendees and the providers of the services.

There must be strict adherence to social distancing guidelines recommended by the CDC and the Division of Public Health.

Owners/operators shall provide clear signage regarding these requirements. (Ex. A, at 3).

134. His detailed March 22nd Order (Fourth Modification) (Ex. B) defined a long universe of approximately 237 categories of “essential businesses,” activities permitted to operate, (id. at 4 ¶ 3) including, among many others, groceries,

pharmacies, alcohol, beer, and wine merchants, and legal or accounting professional services (meaning large law firms). Churches were mentioned but they were kept subject to the ten person limit – “Houses of worship and other place of religious expression or fellowship (subject to the requirements of existing emergency orders, which requirements are not affected by this Order).” (Id. at 16, item 12).

135. The Fourth Modification is extensive with 12 single spaced pages identifying what activity is deemed “essential” and what is prohibited, or “non-essential.” Id. at 5-17. Essential businesses could continue to operate within their structures provided social distancing, hand washing, hand sanitizing, and cleaning was followed. Id. at 5.

136. Defendant also issued a comprehensive list of 237 categories of green lighted permitted activities and a lesser number of red lighted, stopped, or not permitted activities. Those with a red light included restaurants, for example. (Ex. C). While houses of worship supposedly had a green light the limit of nine worshipers and one pastor stayed in place. “Social Advocacy Organizations” had the full green light to operate, while “religious organizations” were handicapped. (Id. at 4).

137. When compared to houses of worship, the discriminatory permitted businesses found in Ex. B include, among many others:

- Grocery and Big Box stores such as Walmart, Target, etc., under the designation of “Workers supporting groceries, pharmacies and other retail that sells food and beverage products.” (Id. at 7).
- “Alcohol, beer and wine, and any wholesalers or distributors of those products.” (Id. at 15).
- The large law and accounting firms, as well as registered agent corporations, like Corporation Service Company, serving the incorporation industry of Delaware, under the designation of “professional services, such as legal, registered agent, or accounting services and associated support services. (Id. at 16).
- The First Amendment protected print, television, radio and other media, such as the Gannett headquarters on Route 141 in New Castle County, under the designation of “workers who support radio, television, and media service, including, but not limited to front line news reporters, studio, and technicians for news gathering and reporting.” (Id. at 11).
- The Departments of Elections in each County, under the designation of “elections personnel.” (Id. at 13).
- Stock and investment brokers and brokerage houses, under the designation of “workers who support financial operations, such as those engaged in the selling, trading, or marketing of securities, those engaged in giving advice on investment portfolios, and those staffing data and security operations centers.” (Id. at 14).
- The insurance industry headquarters and agents, such as Chubb Insurance located on Beaver Valley Road in North Wilmington, under the designation of “workers engaged in the underwriting, selling, marketing, or brokering of insurance, and any workers who support those activities or who associated with the investigation and fulfillment of insurance claims. Id.
- Manufacturing plants and warehouses, under the designation of “workers necessary for the manufacturing of materials, goods, products, or similar distribution.” (Id. at 13).

- And, “houses of worship and other place of religious expression or fellowship subject to the requirements of existing emergency orders, which requirements are not affected by this Order). *Id.* at 16. These burdensome requirements are discussed in exhibits B and C.

138. His April 1st Order (Ninth Modification) tightened up the ten person indoor requirement – “All persons are prohibited from gathering in groups of ten (10) or more people until after May 15, 2020 or the public health threat of COVID-19 has been eliminated.” (Ex. D at 4 ¶ 1).

139. His April 6th Order (Tenth Modification) specifically addressed houses of worship by name –

Paragraph 6.q.12 of the Fourth Modification to the COVID-19 State of Emergency declaration is stricken, and replaced with the following:

*12. Houses of worship and other places of religious expression or fellowship, which shall comply with all social distancing requirements set forth in the COVID-19 State of Emergency declaration and all modifications, including attendance of **no more than 10 people for in-person services under any circumstances.** Houses of worship are strongly encouraged to transition any in-person services to remote services broadcast by telephone or video. (Emphasis added).(Ex. E at 6 item e).*

140. In summary, initially Defendant prohibited public and private gatherings, including religious ones, from being composed of more than 10 persons. At the same time, the ten person limit did not apply to “social advocacy organizations,” or the media, or any of the 236 categories of secular businesses

that were not required to be closed to the public, including law firms and accounting firms, and big box stores such as Walmart.

141. Attached as Ex. F are six photographs taken on May 12, 2020 at the Walmart store located on Centerville Road, in Prices Corner, New Castle County, DE. It demonstrates the hundreds of persons allowed in a big box store under the Defendant's Orders. Those persons were trusted to social distance, while worshipers of God were not trusted to social distance.

142. Such businesses, deemed "essential," also included large retailers, such as beer, wine and liquor stores, but worship of God again was eliminated totally in communal settings.

**a. The May 13th, 2020 Letter from Rev. Dr. Bullock
and the Committee to Save Christmas**

143. In response to two months of these Orders, on May 13, 2020, a First Amendment protected petition for the redress of grievances in the form of a six page letter was directed to Defendant Governor Carney.

144. The letter was sent by "The Committee to Save Christmas" ("Committee"), including Rev. Dr. Bullock and others, acting on behalf of numerous Delaware citizens adversely affected by the Orders

145. The Committee explained that they had sought to be good citizens in time of emergency, respecting the Governor's efforts but that now enough time

had passed, the curve had been flattened, and hospitals and medical care in Delaware were no longer threatened to be overwhelmed, the Committee offered to help the Governor craft new Orders that did not violate the constitutional rights of Delaware citizens.

146. The Committee explained that the Orders illegally discriminated against religious worship, cited the body of still growing positive federal court precedent on the precise issue, and asked for legal relief and respect for the constitutional rights of all Delaware citizens.

147. The entire letter is attached as Ex. G and is incorporated by reference herein.

2. May 15th, 2020 Orders

148. On Friday May 15th , Defendant announced an eventual slight reopening of the State of Delaware from his earlier Orders and the start of a Phase One reopening, effective June 1, 2020.

149. In next door Maryland, its governor had announced a few days earlier that churches and other religious facilities in Maryland were now allowed to hold worship services. While outdoor services were recommended, indoor services were allowed at up to 50 percent capacity and with appropriate physical distancing and mask requirements.

150. But in Delaware, all that Defendant would permit starting on June 1st

in reply to the petition made to him was a reaffirmation that places of worship were still subject to a 10-person limit, and that drive-up religious services would continue to be permitted in church parking lots. Elderly members of the faith community were directed still to shelter in place despite whatever were their own personal well-informed wishes about traveling to church to worship God.

151. "So, we will, on Monday have a guidance to allow more people to come back to our places of worship." "But we want to do it in a way that's safe for the whole congregation, and most importantly for the senior congregants that we have in our churches," he said at that Friday's bi-weekly coronavirus news conference.

152. On May 15th, Defendant issued a 25 page guide (Ex. H), effective June 1st, explaining the types of businesses he would allow to reopen at a 30% capacity, if they practiced certain social distancing requirements:

- Arts & Culture industries including, but not limited to: museums, galleries, libraries, historical attractions and arts education institutions. This specifically included venues that sell tickets, venues that are indoors and venues with fixed seating. So the late Stephen Hawking could give a speech attacking religion to hundreds of ticket buying customers at the Delaware Art Museum or give a public speech at the Wilmington Public Library, but a small church of 100 could not fully assemble and worship God.
- Food & Drink establishments including, but not limited to: restaurants, taverns, breweries, & bars that provide table service.
- Retail including, clothing, shoe, jewelry, sporting goods, books,

florists, and department stores.

- Malls including, but not limited to: shopping malls and strip malls, including all stores and restaurants and other eating establishments within them.
- Consumer services including, but not limited to: barber shops, hair salons, exercise facilities.
- Casinos, including, but not limited to, all gambling, food and drink facilities, lodging facilities, and retail facilities within them.

153. The only time the ten person limit was referenced was with respect to worship services, youth sports, and gyms which could open for business with the limitation that classes in confined spaces (i.e. yoga, exercise, etc...), could only have ten persons in each class.

154. Law firms and chicken processing plants (where a significant number of COVID-19 infections in Delaware had occurred), among many others, had no limitations at all, not ten persons, not 30% of fire marshal capacity, just 100% freedom.

155. In the May 15th, 25 page document, “Places of Worship” were carved out into their own category for special negative treatment, stating “**10-person limit**; Drive-up services; Vulnerable populations should stay home; Additional guidance for reopening will be announced week of May 18.” (Ex. H at 25).

156. So even after 2 ½ months of a State of Emergency, Defendant did not allow for “Places of Worship” to have the same freedoms that numerous

businesses and institutions throughout Delaware had,

a. The May 16th Letter from 165 Delaware Pastors

157. On May 16th, 2020, more than 165 Delaware pastors and Church leaders sent a letter to Defendant Governor Carney. (Ex. I).

158. Among other things, these Delaware religious leaders explained:

- they were writing as “concerned pastors in Delaware” who have watched the restrictions upon religious worship “become more and more severe” in Delaware;
- we “have patiently waited, as we have watched people gather in grocery stores, home improvement centers, liquor stores Some of these have gathered in large numbers;” and
- “Now more than ever, our conscience, based on the Scriptures, sees the gathering of Christ’s Church as ‘essential.’” (Id. at 1).

159. The letter concluded in requesting that the Defendant lift his ban on in person religious worship and permit in person gatherings for religious worship to resume. (Id. at 2-3).

3. May 18th Orders and a Hobson’s Choice

160. Three days later, on May 18, 2020, the Defendant Governor issued a new Order (Ex. J at 6) and regulations (Ex. K) and presented a stark Hobson’s choice to Delaware Churches.

a. Brief Summary

161. The Hobson’s choice Defendant presented was that Delaware

Churches could:

- continue to operate at 10 persons or less, in what he had already admitted was an effective shutdown of religious worship in Delaware (Ex. J at 6); **or**
- they could open at 30% capacity if, and only if, they surrendered to him their sincerely held religious beliefs and allowed him to dictate both the form and content of their religious worship services, in at least 15 different ways (Ex. J at 6, Ex. K at 1-4), including:
 - ▶ Banning any and all religious services on 6 out of 7 days every week;
 - ▶ Banning persons age 65 or older from all Church attendance;
 - ▶ Banning Baptism;
 - ▶ Banning Communion;
 - ▶ Requiring that a “Do Not Enter” sign be posted on all doors banning those 65 or older and those with underlying health conditions;
 - ▶ Limiting the one day of worship services to 60 minutes maximum;
 - ▶ Banning all Church related ministries, including drug and alcohol counseling; and many others.

b. Detailed Analysis of Discriminatory Treatment and Preference for Non-Christians

162. In so doing, the Governor further entangled himself by designing religious worship services with four new pages of single spaced regulations for

churches. (Ex. K).

163. The Governor issued detailed discriminatory operating requirements for churches explaining how he would allow them to practice their religious beliefs. Among other things, he mandated that:

(1). Churches are only allowed to hold a religious worship service on one day each week. They are barred from holding a religious worship service on any other day. Churches are the only entity so singled out. No secular business or institution is similarly restricted. (Ex. J at 1). Previously they could meet each day of the week.

(2). The Order can be read as permitting Churches only to hold a single religious worship service on that single day but is admittedly unclear and contradictory on this point. Given the fear of criminal punishment and imprisonment, Plaintiff and any reasonable person must err on the side of caution here. Churches are the only entity so singled out. No secular business or institution is similarly restricted. (Id.).

(3). At that single religious worship service, churches are limited to 30% of their operating capacity. (Id.). None of the approximately 236 categories of secular businesses or institutions listed in the pre-May 15th Orders are similarly restricted. A number of the additional categories of secular businesses or institutions listed in the May 15th Order are similarly restricted.

(4). The single religious worship service is limited to 60 minutes. (Id.). Churches are the only entity so singled out. No secular business or institution is similarly restricted.

(5). All other religious ministries are banned from being held in person. That includes Bible studies, Women's Ministries, married couples ministries, youth ministries, religious support groups for drug and alcohol addiction, religious education groups, among many others. (Id.). Churches are the only entity so singled out. No secular

business or institution is similarly restricted in a comparable way. Id.

(6). Person to person Communion is explicitly banned and other forms of Communion appear impossible given other restrictions. (Id. at 3). Churches are the only entity so singled out. No secular business or institution is similarly restricted in a comparable way, such as take out food delivery or service within a restaurant.

(7). Religious hymnals and prayer books are banned. Existing hymnals and prayer books may not be used for any purpose whatsoever. (Id.). None of the approximately 236 categories of secular businesses or institutions listed in the pre-May 15th Orders are similarly restricted. For example, the use of the Federal Reporter or the Restatement (Third) of Torts in a law firm's library have not been similarly banned. Only a single category – restaurants – contained in the May 15th Order is somewhat similarly restricted as to the types of menus they are allowed to use.

(8). Churches are banned from using ushers or even passing a collection plate in order to collect tithes and offerings. (Id. at 3). Churches are the only entity so singled out. No secular business or institution is similarly restricted in a comparable way. For example, restaurants are still free to use servers and persons to clean the tables and for those servers to pass plates of food to their diners and other customers.

(9). Any person 65 years old or more is banned from attending religious worship services. (Id. at 1). Churches are the only entity so singled out. No secular business or institution is similarly restricted in a comparable way. For example, persons 65 years and older are free to go to grocery stores, gamble at casinos, buy clothing at big box stores and go to liquor stores to purchase alcohol, among many other things.

(10). Churches were required to post signage at each public entrance which states all of the following: “Do not enter” if: you are at high-risk for contracting COVID-19 (65 and older or have underlying health conditions identified by the CDC as higher risk). (Id. at 1). Those with underlying health conditions, such as asthma, were free to go to grocery stores, gamble

at casinos, buy clothing as big box stores, and go to liquors stores to purchase alcohol, among many other things.

(11). Pastors, readers, and song leaders are singled out and required to be 10 feet away from any and every other person if they are going to take off their masks to perform religious functions, among other things. (Id. at 2). Churches are the only entity so singled out. No secular business or institution is similarly restricted in a comparable way. For example, no other employee or participant of any other comparable secular entity is restricted in this way. General social distancing requirements promulgated by the Center for Disease Control and recommended to all other entities by the State of Delaware only require a 6 foot social distancing requirement, not 10.

(12). The use of choirs for religious worship is explicitly banned. (Id. at 2). Churches are the only entity so singled out. No secular business or institution is similarly restricted in a comparable way.

(13). The Order forbids a Pastor from holding the person they are baptizing. (Id. at 4). Baptism, as a physical sacrament, requires physical contact. When Rev. Landow baptizes, he pours water and places his hand on the one being baptized. When he is baptizing an infant, he holds the child to baptize him or her. Churches are the only entity so singled out. No secular business or institution is similarly restricted in a comparable way. Jews were allowed to touch infants to circumcise them, and doctors were allowed to touch infants as were day care workers.

164. Only if all of these discriminatory mandates, both as to form and content of religious worship services, and many others, were met, did Governor Carney allow such religious worship services to occur.

165. As explained in greater detail under Count I below, the pilgrims had fled England to the New World to escape just such interference with religious conscience, discrimination, and preference for one religion over another.

166. Defendant did not issue any such detailed regulations, or present them with a stark Hobson's choice, for any of the other 236 categories of essential businesses to allow them to continue their operations.

167. Nor did Defendant issue any such detailed regulations, or present them with a stark Hobson's choice, for any of the previously closed businesses that he was going to allow to partially reopen on June 1, 2020.

168. Among other things, Exhibit K dictates that certain state mandated procedures are required to be followed in conducting the Christian religious rite of Baptism. The highly critical legal analysis by Chief Judge Connolly about how this Order violates the First Amendment to the U.S. Constitution is discussed above at section **IV.B.** above.

169. Although Exhibit K dictates specific procedures for how to conduct the Christian religious rite of Baptism, including a prohibition on holding or touching a person being baptized, it does not contain any similar prohibitions on holding or touching, or have any similar prescriptions whatsoever, for the religious rites of other more favored religious groups, such as circumcisions within the religious faith of Judaism, or other religious rites within, for example, the Muslim or Hindu faiths.

170. Defendant's earlier rule of ten, only allowing a worship service to be attended by 10 persons and no more, also was an accommodation for the Jewish

religion, both in purpose and in effect.

171. In Judaism, the Minoan (Hebrew: “number”) is the minimum number of males – ten (10) – required to constitute a representative “community of Israel” for liturgical purposes.

172. When a Minoan is lacking for synagogue services, those who have gathered merely recite their prayers as private individuals. There is thus no public reading from the Torah (first five books of the Bible) and no Hafarah (selection from the prophetic books of the Bible). Such invocations as the Kaddish and Kedushah prayers are likewise omitted, for none of these is considered appropriate unless the “Jewish community” prays as one.

173. Only if all of these mandates both as to form and content of religious worship services, and many others, were met, did Governor Carney allow such religious worship services to occur.

c. May 19th, 2020 - Rev. Dr. Bullock Files His Federal Court Lawsuit

174. On May 19, 2020, Rev. Dr. Bullock filed a federal court lawsuit against Defendant Carney arising out of his many Orders set forth above. The case was captioned as Bullock v. Carney, C.A.No. 20-674-CFC (D.Del.), and initially asserted various claims for violation of the U.S. Constitution’s First Amendment Free Exercise and Establishment Clauses, as well as the Fourteenth Amendment’s Equal Protection Clause, and was later amended to include claims

for violation of Article I, § 1 of the Delaware Constitution of 1897.

4. May 22, 2020 Orders forward

175. After the filing of the Bullock lawsuit in federal court and as the temporary restraining order and preliminary injunction issues moved forward, Defendant continued to issue new Orders and other regulations with the force of law. A partial timeline that was earlier submitted to the federal court to help keep track of some of these events is attached at Exhibit L.⁵

176. On May 22, 2020, Defendant issued his 19th Modification (Ex. M) and on May 23, 2020 issued additional modified rules and procedures for religious worship. (Ex. N).

177. Some of the earlier restrictions on religious worship – such as the ban on persons 65 years and older from church attendance and restricting church services to only 1 day every week – were abandoned.

178. Other of the earlier restrictions – such as the ban on Baptisms – were continued.

179. Still others – such as the ban on religious support groups – was partially lifted and restricted to a maximum of 10 total persons.

⁵ Undersigned counsel notes he has blacked out Exhibit and Tab letter references in Ex. L so as not to create confusion with the Exhibits attached to this Verified Complaint.

180. Finally, as to some of the earlier restrictions – such as the ban on in person Communion – the effect of these changes was unclear so given the serious criminal penalties involved, were still treated as effectively banned.

181. Portions of Chief Judge Connolly’s analysis in the Bullock federal case of the constitutional infirmities of the earlier rules as well as some of these changes are included in section **IV.B.** above,

a. The Bullock Case Later Settles

182. With a trial date set, and on the eve of Defendant’s deposition, Rev. Dr. Bullock’s case in federal court settled in November 2020. The limited terms of the settlement were addressed in section **IV.B.** above.

E. Damages Suffered by Rev. Landow

183. With the 10 person attendance limit churches were closed from March 13, 2020 through June 15th when a Phase 1 60% capacity limit was allowed. On May 18th 30% attendance was allowed but only if Plaintiff allowed the Governor to dictate and formulate his religious rituals.

184. For Plaintiff, through June 15th, there were 14 Sunday mornings and 14 Sunday evenings when assembly and worship of God was forbidden, making a total of 28 worship services denied, including Easter. Good Friday service also was forbidden, making a total of 29 times Rev. Landow was denied the freedom and right to worship God in a group as his faith requires.

185. These 29 occasions also denied him 29 times the freedom to speak, teach, and preach to his congregation, to sing in praise of God with his congregation, to assemble with the elderly and unsaved in his church sanctuary, to celebrate the Lord's Supper regularly, as well as scheduling baptisms.

186. At all these times from March 13, 2020, until at least June 15, 2020, Plaintiff Rev. Landow was forced by Governor Carney to agonize over whether following the Governor's mandates was requiring him to sin by violating his conscience under the threat of arrest and criminal law prosecution. In the words of James 4: 17 (KJV), "Therefore to him that knoweth to do good, and doeth it not, to him it is sin." Consequently, Plaintiff endured tyranny and suffered great emotional distress, anxiety, and suffering.

187. As a direct and proximate result of the actions of the Defendant, as detailed herein, Plaintiff has suffered nominal damages of one dollar, as well as garden variety compensatory damages for his great emotional distress, anxiety, and suffering while he and his congregation were ordered by the State to commit grievous sin and disobey God in numerous ways on pain of imprisonment.

V. ALLEGATIONS REGARDING THE DEFENDANT'S CONDUCT

188. All the actions of the defendant described herein were taken pursuant to policies, practices, and/or customs of the Office of the Governor of Delaware and were authorized, sanctioned, implemented, permitted, and/or ratified by

officials functioning at a policymaking level.

189. By these policies, practices, and/or customs of officials functioning at a policymaking level, the Governor has denied Plaintiff's constitutional rights under Article I and the First and Fourteenth Amendments to the United States Constitution.

190. The Defendant's actions violated clearly established federal constitutional rights of which any official would have known.

191. At all times material hereto the Defendant participated in, implemented, authorized, and/or sanctioned the State and federal constitutional deprivations described above.

192. At all times material hereto, the Defendant and his agents were acting under color of law.

193. The State and federal constitutional deprivations described herein are fairly attributable to the State of Delaware.

194. The Defendant either knew or showed a deliberately indifferent, negligent, or reckless disregard for the matter of whether his conduct violated State and federal Constitutional rights.

195. The actions of the Defendant and his agents or employees were deliberate.

196. The Defendant's actions constitute an abuse of governmental power.

197. The Defendant's actions do not further any narrowly drawn substantial governmental interest.

198. The Defendant's actions are not so reasonable as to further any governmental interest asserted and do not closely fit the goal of serving those governmental interests.

199. The Defendant's actions were discriminatory, capricious, irrational, and arbitrary.

COUNT I (Art I, § 1 of the Delaware Constitution of 1897)

200. Plaintiff repeats and realleges paragraphs 1 - 199 set out above.

A. The History and Experience of the Delaware Constitutional Framers

201. Review of ancient and Colonial American history reveals a familiarity by our ancestors with deadly plagues, pestilence and disease as well as the impact of these deaths on their practice of religious worship and assembly.

1. Christians Practicing Their Faith In Times of Plague, Pestilence, and Disease

202. With reference to Christians practicing their faith, sheltering in place or, for example, assembling in times of such plague and pestilence, the broader historical record reveals that pestilence or disease never stopped Christians from assembling, worshiping, or practicing their faith. For example, in the third century A.D., in Caesarea, Eusebius wrote this about Christians during a plague in ancient

Rome: “All day long some of them [the Christians] tended to the dying and to their burial, countless numbers with no one to care for them. Others gathered together from all parts of the city a multitude of those withered from famine and distributed bread to them all.”

203. Because of this, in the fourth century the Roman emperor Julian exhorted the pagan priesthood to compete with the Christian charities in times of plague. In a letter to the high priest of Galatia, Julian urged the distribution of grain and wine to the poor, noting that “the impious Galileans [Christians], in addition to their own, support ours, [and] it is shameful that our poor should be wanting our aid.”

204. In 1527 the Reformation leader Martin Luther, regarding the plague, sheltering in place, and public worship, wrote in his letter entitled *‘Whether one may Flee from a Deadly Plague’* that: “Those who are engaged in a spiritual ministry such as preachers and pastors must likewise remain steadfast before the peril of death. . . . For when people are dying, they most need a spiritual ministry which strengthens and comforts their consciences by Word and sacrament and in faith overcomes death.”

205. Theolophilus Stark, in his Life of Martin Luther, also records Luther as saying at the time of sickness and plague regarding pastors: “If it be the will of God that we remain and die, our care will avail us nothing. Let every one dispose

his mind this way: if he be bound to remain and to assist his fellow-men in their death struggles, let him resign himself to God, and say, ‘Lord, I am in thy hand; thou hast fixed me here; thy will be done.’”

206. On the duty of pastors to conduct public worship services in the face of death, Williams Cupper, in his *Sermon 10* (1592) wrote: “This then is a spiritual duty which God’s faithful ministers ought to perform in the behalf of the people, they ought to be instant at all times, and ‘to preach the Word in season, and out of season,’ but especially in times of public calamity.”

207. On assembly to worship during plague, we find the following From the Records of the Burgh of Edinburgh (1585): “The foresaid ballies [Magistrate] and a part of the counsel ordains proclamation to be made through the burgh charging no manner of persons enduring the time of this present pestilence, either men or women, to taken upon hand to hold any conventions. . . but only to convene at Kirk [Church] and market and to no other places. . .”

208. In 1606, Scottish ministers were imprisoned for holding a Church assembly during the plague unapproved by King James I. They wrote in, An Apologetical Narration of the State & Government of the Kirk [Church] of Scotland, “We are grieved that we are detained so long from our flocks and families, in time of the danger of the plague, and other great necessities.”

209. In fact, the Presbytery of Dumferline in 1645 censured some of its

ministers for not worshiping publicly during plague, warning them, "...not to remove their own persons from their charge in the time of distress their flocks are under because of the plague of pestilence."

210. Theodore Beza in his A Learned Treatise of the Plague (1665) also wrote: ". . . and for faithful pastors to forsake but one poor sheep at that time when he most of all needs heavenly comfort, it were too shameful, nay, too wicked a part."

211. The "Black Death," or the Bubonic plague, also well known to our British ancestors, killed millions from the Late Middle Ages and forward through the American Revolution until the early 19th century.

2. The Experience in Colonial America

212. Importantly, in light of this history, the Colonial framers of the Delaware Constitution in 1776 and 1792 also knew of death by plague, pestilence, and disease, and they still wrote no exception to the freedom to worship, according to a responsible civic minded conscience, into the absolute freedoms granted in Art. I, § 1. They and their ancestors knew and were well-experienced with massive deaths by malaria, smallpox epidemic, bubonic plague, and other deadly diseases without any of the protections of modern medicine. But despite such impending threat of death, the door to the church was always open to pray and implore the mercy of Almighty God under the first freedom granted to all

Delawareans.

213. Malaria, known as “Marsh Fever” or “Tertian Ague,” and its ravages was so well known in the English speaking world that it is said to be mentioned in eight plays of William Shakespeare.

214. As to Mosquito born malaria, such an -

infection left its mark on nearly every ancient society, contributing to the collapse of Bronze-Age civilizations in Greece, Mesopotamia and Egypt. . . . [The invention of quinine allowed a cure and] George Washington secured almost all the available supplies of it for his Continental Army during the War of Independence. When Lord Cornwallis surrendered at Yorktown in 1781, less than half his army was fit to fight. Malaria had incapacitated the rest.⁶

Reportedly, British forces in the South suffered huge losses from the disease.

215. George Washington also had to face smallpox when it was used as a weapon by the British against him during the Revolution.⁷ During the earlier French and Indian War, the British proposed the use of smallpox against Indian populations hostile to the British. Smallpox earlier had devastated Aztec and Inca empires affected by the Spanish and Portuguese, as well as Indian populations on the American East Coast. In Europe, hundreds of thousands died annually from

⁶ Amanda Foreman, “How Malaria Brought Down Great Empires,” The Wall Street Journal, (October 16-17, 2021), at C4.

⁷ Ron Chernow, Washington, A Life (Penguin Books, 2010), 199-200, 231-32, 286.

the disease, known as the “speckled monster.”

B. The Colonies Were Founded Seeking Religious Freedom From Government Interference

216. Protestant Christians have long objected to the state interfering in their worship.

217. For example, John Bunyan’s classic 1678 allegory, The Pilgrim’s Progress, is one of the most published books in human history next to the Bible. Bunyan wrote the book while he was in jail for 12 years because he refused to stop gathering people for worship when the English government mandated he stop.

218. The Apostle Paul speaks of early Christians as “pilgrims on the earth.” Hebrews 11:13 (KJV).

219. The experiences of the earlier settlers who left England for the New World and founded the American colonies reflect these collective experiences.

220. For example, the pilgrims of the Plymouth Colony of 1620 in early American history sailed West because there they would find what they wanted most, what they needed most: the liberty to worship God according to their conscience. They fled to pre-colonial America to avoid religious persecution for their beliefs and the Established Church of England directing how they should worship God.

221. Indeed, as the U.S. Supreme Court has explained, “[s]eeking to escape

the control of the national church, the Puritans fled to New England, where they hoped to elect their own ministers and establish their own modes of worship.”

Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC, 565 U.S. 171, 182 (2012).

222. William Penn and the Quakers also fled from England and founded the Colony of Pennsylvania (and governed its lower three counties that are now Delaware) seeking to practice their religion and worship God as they wanted free of the persecution they suffered for doing so in England.

223. The second Lord Baltimore founded Maryland as a Colony to protect Roman Catholic freedom to worship God as they wanted free of the widespread persecution they had suffered.

224. Similarly, Roger Williams founded the Colony of Rhode Island, broke with the Puritans, and protected the freedom of Baptists to worship God as they wished.

225. Recognizing this history, the U.S. Supreme Court has recognized that:

By the time of the adoption of the [U.S.] Constitution, our history shows that there was a widespread awareness among many Americans of the dangers of a union of Church and State. These people knew, some of them from bitter personal experience, that one of the greatest dangers to the freedom of the individual to worship in his own way lay in the Government's placing its official stamp of approval upon one particular kind of prayer or one particular form of religious services. They knew the anguish, hardship and bitter strife that could come when zealous religious groups struggled with one another to obtain the Government's stamp of

approval from each King, Queen, or Protector that came to temporary power. The Constitution was intended to avert a part of this danger by leaving the government of this country in the hands of the people rather than in the hands of any monarch. But this safeguard was not enough. Our Founders were no more willing to let the content of their prayers and their privilege of praying whenever they pleased be influenced by the ballot box than they were to let these vital matters of personal conscience depend upon the succession of monarchs.

Engel v. Vitale, 370 U.S. 421, 429 (1962) (emphasis added).

C. Freedom of Religious Worship Is the First Freedom in Delaware.

226. Reflecting this long history, the principles of freedom to worship free from state interference have been enshrined in Delaware’s Constitution from its founding in 1776.

227. Section 2 of the Declaration of Rights and Fundamental Rules of the Delaware State, enacted on September 11, 1776, states:

That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understandings ... and [] no authority can or ought to be vested in, or assumed by any power whatever that shall in any case interfere with, or in any manner controul [sic] the right of conscience in the free exercise of religious worship.

228. Article 29 of the Delaware Constitution of 1776, enacted on September 20, 1776, states, “There shall be no establishment of any one religious sect in this state in preference to another . . .”

229. Article 30 of the Delaware Constitution of 1776 states, “No article of

the declaration of rights and fundamental rules of this state . . . nor the . . . twenty-ninth article of this constitution, ought ever to be violated **on any pretence whatsoever.**” (Emphasis added). This plain language can be said to clearly prohibit the Governor from interfering with religious practice or faith on the “pretence” of a health emergency.

230. Sixteen years later, the Delaware Constitution of 1792 incorporated and expanded upon these principles from the Declaration of Rights and Constitution of 1776.

231. The Preamble to the 1792 Constitution states

Through divine goodness, all men have by nature, the rights of worshipping [sic] and serving their Creator according to the dictates of their consciences . . . and as these rights are essential to their welfare, for the due exercise thereof, power is inherent in them. . .

232. Article I, § 1 of the 1792 Constitution states -

Although it is the duty of all men frequently to assemble together for the public worship of the Author of the universe; and piety and morality, on which the prosperity of communities depends, are thereby promoted; . . . and no power shall or ought to be vested in or assumed by any magistrate, that shall in any case interfere with, or in any manner control the rights of conscience, in the free exercise of religious worship, nor a preference given by law to any religious societies, denominations, or modes of worship.

233. Importantly, the substance of Article 30 of the Delaware Constitution

of 1776 – that Delaware government may not violate the religious worship rights of the Delaware citizenry “on any pretence whatsoever” – also survived, although its form was changed and it also was strengthened in the new Delaware Constitution of 1792.

234. The Reserve Clause of Article I – now encompassing the entirety of the new Delaware Bill of Rights of the 1792 Constitution states – **“We declare that every thing in this article is reserved out of the general powers of government here-in-after mentioned.”** (Emphasis in original).

235. In addition to the bolding of the text, the 1792 Constitutional Framers also put the Reserve Clause into all capital letters to provide even more emphasis of their meaning.

236. Each of these provisions were reenacted in full in the Delaware Constitution of 1831, with what appears to be a single irrelevant change of one piece of punctuation only.

237. Subsequently, in the current version of our Constitution, the Delaware Constitution of 1897, both of these provisions survive in full, with the only edits appearing to be updated spelling and changes to make the language gender neutral.

238. The Preamble of the Delaware Constitution of 1897 currently reads –

Through Divine goodness, all people have by nature the rights of worshiping and serving their Creator according to the dictates of their consciences . . . and as these rights are essential

to their welfare, for due exercise thereof, power is inherent in them. . .

239. Structurally, the Delaware Constitution is broken down into seventeen separate Articles.

240. Article I of the Delaware Constitution is entitled “Bill of Rights.” It protects a host of individual rights including: to freedom of speech and the press, § 5; to assemble and petition, § 16; to trial by jury, § 4; to keep bear arms, § 20; to habeas corpus, § 13; to equal rights regardless of race, color, national origin or sex, § 21; among many others. And yet the very first individual right protected by the very first section of Article I is entitled “Freedom of Religion.”

241. This first freedom of the Delaware Constitution states:

§ 1. Freedom of religion.

Section 1. Although **it is the duty of all persons frequently to assemble together for the public worship of Almighty God**; and piety and morality, on which the prosperity of communities depends, are hereby promoted; yet no person shall or ought to be compelled to attend any religious worship, to contribute to the erection or support of any place of worship, or to the maintenance of any ministry, against his or her own free will and consent; and **no power shall or ought to be vested in or assumed by any magistrate that shall in any case interfere** with, or in any manner control the rights of conscience, **in the free exercise of religious worship**, nor a preference given by law to any religious societies, denominations, or **modes of worship**.
(Emphasis added).

242. Article I is then followed by numerous additional Articles setting up the ins and outs of the government of the State of Delaware. For example, the position of Governor of the State of Delaware was not created until Art. III, § 1, and the General Assembly was not created until Art. II, § 1.

243. The Delaware Constitution itself makes clear that Delaware government is constitutionally forbidden from entering the religious sphere.

244. In addition to the plain text of Art. I, § 1 set forth above, this conclusion also is supported by other sections of the Delaware Constitution.

245. For example, the Reserve Clause of Article I follows the twenty-one separate sections of the Delaware Bill of Rights contained entirely within Article I. It is part of the Bill of Rights and The Reserve Clause states –

"WE DECLARE THAT EVERYTHING IN THIS ARTICLE IS RESERVED OUT OF THE GENERAL POWERS OF GOVERNMENT HEREINAFTER MENTIONED."

246. Stated another way, the Reserve Clause makes clear that in the 2020 COVID-19 pandemic it was beyond the power of both the Executive and Legislative branches of Delaware government to make any laws affecting or otherwise infringing upon the rights to freedom of religion and religious worship contained within Article I, § 1 of the Delaware Constitution. There can be no other construction of the plain meaning of the words of these constitutional

provisions.

D. Applying an Absolute Freedom Test the Governor's Orders Were Unconstitutional.

247. As noted above, the construction of Art. I, § 1 addressed in this case is an absolute one, as required by its plain terms, and can be summarized as follows:

No power shall ever be "vested in or assumed by any magistrate" to "interfere with or in any manner control the rights of conscience in the free exercise of religious worship" or to "prefer" the "modes of worship" of one religion over another.

248. Freedom to assemble and worship according to conscience, freedom to speak, preach and teach from the pulpit, freedom to sing in praise of God, freedom to allow the aged to attend religious worship, the freedoms to Baptize or celebrate the Lord's Supper according to particular rituals, and the freedom not to have one religion preferred over another were denied by the Defendant on at least 29 occasions. This started with the initial total lockdown effective on March 13, 2020, through Easter and the discriminatory 10 person limit into the middle of May, and then was followed by the Hobson's choice of approved government written religious rituals or continuing the 10 person lockdown.

249. Defendant's actions interfered with the "duty of all persons frequently to assemble together for the public worship of Almighty God," as recognized by the first sentence of the first Article of the Delaware Constitution.

250. Defendant “controlled,” “infringed” and “interfered with” "the rights of conscience, in the free exercise of religious worship,” and "prefer[ed] by law" the "modes of worship" of one religion (Judaism) over another (Christianity).

1. The Absolute Prohibition on Preferred Modes of Worship Was Violated.

251. First, there was the total lockdown shelter in place Orders from March 13th through May 18th. In Defendant Carney’s own admission, the “effect[]” of his Orders was a complete and total shutdown of all religious worship in Delaware.

252. Second, there was the May 18th Hobson’s choice offered to Plaintiff of allowing limited communal worship if he surrendered his sincerely held religious beliefs and allowed Defendant Carney to dictate the form and content of his religious worship.

253. By dictating to churches who may come to their services, how old they can be, how many can come, whether they can sing, how they must celebrate the Lord’s Supper, how they can baptize, and how long their services can be, forbidden “**modes of worship**” were established in violation of the absolute protections of Art. I, § 1 which interfered with the “rights of conscience” in the free exercise of religious worship.

254. These “modes of worship restrictions” were not applied to secular institutions. Churches were singled out. For example, the Governor’s Guidelines for Phase 1 reopening (Ex. H), issued on May 15, 2020, said that Performing Arts

venues may hold gatherings at 30% capacity with no restrictions regarding age or underlying health conditions for individuals. A 65-year-old person could go to a concert but, under the guidelines, would be breaking the law if he went to church. A 65-year-old woman with asthma could go to a sit-down restaurant and be handed food by a waiter but going to church was prohibited. This was showing preference to secular institutions and singling out churches. A concert at a performing arts venue had no restrictions on how long a performance could go, but the guidelines stated that church services must be limited to one hour. This interfered with the “modes of worship” and free exercise of worship. If anything, restrictions on churches should have been more lenient than those placed on private business because of their preferred religious interest and constitutional protections, but the Governor’s mandates were vastly more restrictive and unconstitutional.

255. Up to a June 2nd preliminary injunction hearing, Governor Carney also refused to abandon his specifically mandated religious procedures, including a ban on holding or in any way touching a person during Baptisms. But, at the same time, he targeted the Christian religious rite of Baptism, Governor Carney refused to extend his prohibitions on touching or holding to the religious rites of other of his more favored religious groups, such as circumcisions within the religious faith of Judaism. Chief Judge Connolly was unimpressed by this defense which

violated long established federal Establishment Clause principles, observing the legal “landscape changes drastically” when the Governor’s criminal mandates “treat Jewish circumcisions differently than Protestant baptisms.” (Bullock TRO Hrg. Tr. at 28-29, 6/2/20).

256. Defendant’s earlier rule of ten, only allowing a worship service to be attended by 10 persons, and no more, was also another accommodation for the Jewish religion, as explained in section **IV.C.3.b.** above.

2. The Absolute Constitutional Prohibition on Worship and Freedom of Conscience Was Denied.

257. The Governor’s Orders, on their face and as applied, impermissibly burdened Plaintiff’s central sincerely held central religious beliefs, compelled Plaintiff to either change those beliefs or to sin and act in contradiction to them and his conscience, and forced Plaintiff to choose between the teachings and requirements of his sincerely held religious beliefs in the commands of Scripture regarding: weekly assembly to worship; weekly speaking; preaching and teaching; singing in praise of the Creator; open doors for all; and the ordinances of Baptism and the Lord’s Supper. This constituted the State’s imposed value system on the Plaintiff - all on penalty of six months imprisonment - and all of which violated the rights of conscience in the free exercise of religion guaranteed by Article 1.

258. The Governor’s Orders, on their face and as applied, placed Plaintiff in an irresolvable conflict between compliance with the Governor’s Orders and his conscience concerning central sincerely held religious beliefs.

259. The Governor’s Orders, on their face and as applied, put substantial pressure on Plaintiff to violate his conscience and his sincerely held central religious beliefs by ignoring the teachings and tenets of Scripture concerning the assembling of Believers.

E. Applying the Strict Scrutiny Test of Sherbert v. Verner the Defendant’s Actions Were Unconstitutional.

260. Alternatively, the appropriate construction of Art. I, § 1 is to restore the compelling state interest test as set forth in Sherbert v. Verner, 374 U.S. 398 (1963), and Wisconsin v. Yoder, 406 U.S. 205 (1972),⁸ and to guarantee this application even in cases where neutral laws of general applicability affect the free exercise of religion.

261. The test urged is that Government shall not “substantially burden” a person’s exercise of religion, even if the burden results from a rule of general applicability, except that Government may “substantially burden” a persons exercise of religion only if it demonstrates that application of the burden to the

⁸ See Fulton v. City of Philadelphia, - U.S. -, 141 S.Ct. 1868, 1884-1926 (2021) (Alito, J. concurring).

person (1) is in furtherance of a “compelling governmental interest,” and (2) is the “least restrictive means” of furthering that compelling governmental interest.

262. The substantial burdens on Plaintiff’s free exercise of religion are set out at sections **II.A.3.** and **IV.A.** above.

263. As set forth in Count II below, no compelling state interest was present to justify Defendant’s discriminatory Orders which were riddled with hundreds of secular exceptions and several preferences for the Jewish religious tradition. The State lacks a compelling, legitimate, or rational interest in the Governor’s Orders’ application of different standards for churches and religious gatherings than those applicable to exempted businesses or non-religious entities.

264. The Governor’s Orders also are a religious gerrymander.

265. Even if the Governor’s Orders restriction on religious gatherings were supported by a compelling interest, they are not the least restrictive means to accomplish the government’s purported interest.

266. The Governor’s Orders, on their face and as applied, are not narrowly drawn because they specifically target Plaintiff’s sincerely held central religious beliefs and set up a system of individualized exemptions that permits certain other similarly situated businesses or non-religious entities to continue operations under certain guidelines while prohibiting religious gatherings, such as Plaintiff as a pastor and his church and religious gatherings, from operating with similar

guidelines.

267. The Governor's Orders are under inclusive in that secular activities are not subject to the restrictions that are imposed on religious activities.

268. The Governor's Orders, on their face and as applied, fail to accommodate Plaintiff's sincerely held religious beliefs.

F. Employ. Div. v. Smith - Neither Neutral Nor Generally Applicable

269. Count II below addresses this last alternative construction of Art. I, § 1.

270. Plaintiff's remedy at law is inadequate.

271. Plaintiff has no adequate remedy at law to correct the continuing deprivation of his most cherished liberties under the Delaware Constitution.

272. There is a direct causal relationship between Defendant's actions and the harm Plaintiff has suffered.

273. Defendant's actions were the but for cause of the deprivations suffered by Plaintiff.

274. As a direct and proximate result of Defendant's actions, Plaintiff has been injured.

275. Plaintiff's constitutional right to "freedom of religion" has been denied under Art. I, § 1 of the Delaware Constitution of 1897.

COUNT II - (First Amendment - Free Exercise - Strict Scrutiny of Orders That Were Neither Neutral Nor Generally Applicable)

276. Plaintiff repeats and realleges paragraphs 1 - 275 set out above.

277. Applying the neutral laws of general applicability test to the Defendant's shutdown Orders as written and as applied they substantially violated the Free Exercise Clause of the U.S. Constitution as that doctrine is currently applied because of their numerous discriminatory effects as detailed in this Complaint.

278. For example, initially Defendant prohibited public and private gatherings, including religious ones, from being composed of more than 10 persons. At the same time, the ten person limit did not apply to "social advocacy organizations" (Ex. C at 4), or the media, or another 236 categories of secular businesses not required to close to the public, such as large law firms and accounting firms, and big box stores such as Walmart.

279. Section IV.C.3.b. detailed such discriminatory treatment and preference for non-Christians.

280. For the Free Exercise Clause, the governing test is found in Employ. Div. v. Smith, 494 U.S. 872 (1990), and Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 523 (1993), which require, *inter alia*, the following:

- A law which burdens religious liberty, alone, and fails one of the interrelated requirements of neutrality or general

applicability, receives strict scrutiny review, but will otherwise receive rationale basis review;

- A law which burdens religious liberty, while at the same time infringing other protected constitutional rights – such as freedom of speech, peaceable assembly, association or equal protection, among others – receives strict scrutiny review.

281. For the reasons stated throughout, the Defendant's Orders fail strict scrutiny review.

282. Additionally, Judge Phipps of the Third Circuit has already detailed additional reasons why Defendant's exception riddled Orders fail strict scrutiny review in their targeting of religious worship along with other First Amendment rights. See Bullock v. Carney, No. 20-2096, 2020 WL 7038527, at *2 (3d Cir. June 4, 2020) (Phipps, J., dissenting) (TRO appeal).

283. For example, Defendant's Orders impose additional requirements on Pastors standing more than 6 feet away from their congregation but does not impose any similar additional restrictions on any employees of a secular businesses. Id. at 2.

284. Defendant's Orders forbid a pastor from touching a child during a baptism but did not impose any similar requirements on other essential workers such as childcare workers. Id. at 2.

285. Defendant's Orders also imposed certain restrictions on how Churches touch and prepare food and drink used in communion but did not impose any

similar requirements on persons touching food in secular settings, such as grocery stores. Id. at 3.

286. Plaintiff has no adequate remedy at law to correct the continuing deprivation of his most cherished liberties under the U.S. Constitution.

287. There is a direct causal relationship between Defendants' actions and the harm Plaintiff has suffered.

288. Defendant's actions were the but for cause of the deprivations suffered by Plaintiff.

289. As a direct and proximate result of Defendant's actions, Plaintiff has been injured.

290. Plaintiff's constitutional right to free exercise has been denied under the First and Fourteenth Amendment of the U.S. Constitution and 42 U.S.C. § 1983.

COUNT III (First Amendment - Hybrid Claim for Religious Speech, Religious Assembly, Religious Association and Free Exercise Worship - Strict Scrutiny - Even if Orders Are Neutral and Generally Applicable)

291. Plaintiff repeats and realleges paragraphs 1 - 290 set out above.

292. The State lacks a compelling, legitimate, or rational interest in the Governor's Orders' application of different standards for churches and religious gatherings than those applicable to exempted businesses or non-religious entities.

293. The "First Amendment bars application of a neutral, generally

applicable law to religiously motivated action” when the actions also involve the Free Exercise Clause “in conjunction with other constitutional protections,” such as other First Amendment protections. Smith, 494 U.S. at 881. In other words, strict scrutiny applies even if the law is neutral and generally applicable as long as other First Amendment freedoms are implicated. These are called “hybrid” cases.

Id.

294. Religious speech, assembly, and association receive just as much protection under the First Amendment as their secular counterparts.

Our precedent establishes that private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression. Indeed ... government suppression of speech has so commonly been directed precisely at religious speech that a free-speech clause without religion would be Hamlet without the prince. Accordingly, we have not excluded from free-speech protections religious proselytizing, or even acts of worship.

Capitol Square Review & Advisory Bd. v. Pinette, 515 U.S. 753, 760 (1995)

(numerous internal citations omitted); see also Widmar v. Vincent, 454 U.S. 263, 269 (1981) (“[R]eligious worship and discussion . . . are forms of speech and association protected by the First Amendment.”).

295. The State lacks a compelling, legitimate, or rational interest in the Governor’s Orders’ application of different standards for churches and religious gatherings than those applicable to exempted businesses or non-religious entities.

296. Plaintiff has no adequate remedy at law to correct the continuing

deprivation of his most cherished liberties.

297. There is a direct causal relationship between Defendant's actions and the harm Plaintiff has suffered.

298. Defendant's actions were the but for cause of the deprivations suffered by Plaintiff.

299. As a direct and proximate result of Defendant's actions, Plaintiff has been injured.

300. Plaintiff's constitutional rights to religious free speech, religious association, religious assembly and religious worship have been denied under the First and Fourteenth Amendments of the U.S. Constitution and 42 U.S.C. § 1983.

COUNT IV (First Amendment - Establishment Clause)

301. Plaintiff repeats and realleges paragraphs 1 - 300 set out above.

302. The purpose of the Governor's Orders was to hinder religious practice and worship. He did not act with a secular legislative purpose.

303. The primary effect of the Governor's Orders inhibits religion.

304. The Governor's Orders foster an excessive government entanglement with religion in that he is designing and mandating particular forms of religious ritual and practice.

305. Under settled Establishment Clause doctrine a state actor may not:

- “force []or influence a person ... to remain away from church

against his will;”

- “punish[]” a person “for church attendance;”
- “participate in the affairs of any religious organizations;”
- “set up a church;” or
- “pass laws which aid one religion ... or prefer one religion over another;”)

Everson v. Bd. of Educ. of Ewing Twp., 330 U.S. 1, 15-16 (1947).

306. Defendant violated all five of these prohibitions.

307. He forced Plaintiff and other people to remain away from church against their will. It was a crime to try to go to church on Easter in March of 2020.

308. He threatened to punish Plaintiff and others with six months in jail for such church attendance on Easter.

309. He participated in the affairs of a religious organization by defining its religious rites and rituals regarding Baptism and the Lord’s Supper. See Sections IV.C.3. above.

310. He set up his own church by defining how worship was to be conducted, such as through livestream or in outside parking lots. See Section IV.C.1. above.

311. He passed laws to aid one religion or to prefer it over others regarding the Hebrew requirement of circumcision and the Minoan. See Section IV.C.3.b.

above.

312. The Governor's Orders, on their face and as applied, have caused, are causing, and will continue to cause Plaintiff immediate and irreparable harm and actual and undue hardship.

313. Plaintiff has no adequate remedy at law to correct the continuing deprivation of his most cherished liberties under the U.S. Constitution.

314. There is a direct causal relationship between Defendants' actions and the harm Plaintiff has suffered.

315. Defendant's actions were the but for cause of the deprivations suffered by Plaintiff.

316. As a direct and proximate result of Defendant's actions, Plaintiff has been injured.

317. Plaintiff's constitutional right to be free of government establishment of religion has been denied under the First and Fourteenth Amendment of the U.S. Constitution and 42 U.S.C. § 1983.

COUNT V (Fourteenth Amendment - Equal Protection - Religion - Suspect Class - Strict Scrutiny)

318. Plaintiff repeats and realleges paragraphs 1 - 317 set out above.

319. Under the Fourteenth Amendment, "we strictly scrutinize governmental classifications based on religion." Smith, 494 U.S. at 886 n.3; see

Schumacher v. Nix, 965 F.2d 1262, 1266 (3d Cir. 1992) (“a classification . . .

drawn upon inherently suspect distinctions such as . . . religion . . . must meet the strict scrutiny standard.”).

320. This is because -

These factors are so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy—a view that those in the burdened class are not as worthy or deserving as others. For these reasons . . . these laws are subjected to strict scrutiny and will be sustained only if they are suitably tailored to serve a compelling state interest.

City of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432, 440 (1985).

321. The Governor’s Orders specifically classify religious worship and related activity as its own separate classification to be regulated.

322. The Governor’s Orders treat Plaintiff differently from similarly situated persons with religion being the only difference between them.

323. The Governor’s Orders draw explicit distinctions based on religion.

324. Governmental action based on religion is a constitutionally suspect class of actions.

325. The Governor’s Orders fail strict scrutiny review.

326. The Governor’s Orders, on their face and as applied, have caused, are causing, and will continue to cause Plaintiff immediate and irreparable harm, and actual and undue hardship.

327. Plaintiff has no adequate remedy at law to correct the continuing deprivation of his most cherished liberties under the U.S. Constitution.

328. There is a direct causal relationship between Defendant's actions and the harm Plaintiff has suffered.

329. Defendant's actions were the but for cause of the deprivations suffered by Plaintiff.

330. As a direct and proximate result of Defendant's actions, Plaintiff has been injured.

331. Plaintiff's constitutional right to be free of religion as the basis for governmental action has been denied under the Fourteenth Amendment of the U.S. Constitution and 42 U.S.C. § 1983.

Wherefore, Plaintiff prays that the Court:

- A. Under Art. I, § 1 of the Delaware Constitution, enter a Permanent Injunction restraining Defendant Carney, his successors as Governor, his officers, agents, servants, employees and attorneys, those other Delaware State officials, County officials, local municipal officials, and State, County and municipal law enforcement officials, and other persons who are in active concern or participation with the Governor, from enforcing Emergency Orders which are a violation of the constitutional rights of Rev. Landow and his congregation, specifically: (1) any shutdown Order prohibiting Sunday or weekday assembly for religious worship or setting any attendance limit of 10 or more on the number of persons permitted to worship; (2) any shutdown or subsequent Orders preventing or directing how speech, preaching and teaching from the pulpit is to occur; (3) any shutdown or subsequent

Orders prohibiting speech through singing in worship of God, individually or as a group; (4) any shutdown or subsequent Orders prohibiting assembly of worshipers based on age or any other personal characteristics such as health, wealth, race, gender, or other physical or emotional characteristic; (5) any Orders prohibiting Baptism or directing how the ritual is to be conducted; (6) any Orders prohibiting the Lord's Supper or directing how the ritual is to be conducted; and (7) expressing preferences or favoritism for the practices of one religion over another.

- B. Under Art. I, § 1 of the Delaware Constitution, enter a declaratory judgment declaring the following previous acts of Defendant Carney to be a violation of the constitutional rights of Rev. Landow and his congregation: (1) the shutdown Order prohibiting Sunday or weekday assembly for religious worship or setting the attendance limit of 10 or more on the number of persons permitted to worship; (2) the shutdown and subsequent Orders preventing or directing how speech, preaching and teaching from the pulpit is to occur; (3) the shutdown and subsequent Orders prohibiting speech through singing in worship of God, individually or as a group; (4) the shutdown and subsequent Orders prohibiting assembly of worshipers based on age or any other personal characteristics such as health, wealth, race, gender, or other physical or emotional characteristic; (5) Orders prohibiting Baptism or directing how the ritual is to be conducted; (6) Orders prohibiting the Lord's Supper or directing how the ritual is to be conducted; and (7) expressing preferences or favoritism for the practices of one established religion over another.
- C. Enter judgment against the individual capacity Defendant Carney for one dollar, as well as compensatory damages in an amount to be set by the Court.
- D. Under the Free Exercise and Establishment Clauses of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, enter a declaratory judgment declaring the following previous acts of Defendant

Carney to be a violation of the constitutional rights of Rev. Landow and his congregation: (1) the shutdown Order prohibiting Sunday or weekday assembly for religious worship or setting the attendance limit of 10 or more on the number of persons permitted to worship; (2) the shutdown and subsequent Orders preventing or directing how speech, preaching and teaching from the pulpit is to occur; (3) the shutdown and subsequent Orders prohibiting speech through singing in worship of God, individually or as a group; (4) the shutdown and subsequent Orders prohibiting assembly of worshipers based on age or any other personal characteristics such as health, wealth, race, gender, or other physical or emotional characteristic; (5) Orders prohibiting Baptism or directing how the ritual is to be conducted; (6) Orders prohibiting the Lord's Supper or directing how the ritual is to be conducted; and (7) expressing preferences or favoritism for the practices of one established religion over another.

- E. Under the Free Exercise and Establishment Clauses of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, because of violations of the constitutional rights of Rev. Landow, enter a Permanent Injunction restraining Defendant Carney, and his successors as Governor, and his officers, agents, servants, employees and attorneys, and those other Delaware State officials, County officials, and local municipal officials, and State, County and municipal law enforcement officials and other persons who are in active concern or participation with the Governor, from enforcing Emergency Orders which are a violation of the rights of Rev. Landow and his congregation, specifically: (1) any shutdown Order prohibiting Sunday or weekday assembly for religious worship or setting any attendance limit of 10 or more on the number of persons permitted to worship; (2) any shutdown or subsequent Orders preventing or directing how speech, preaching and teaching from the pulpit is to occur; (3) any shutdown or subsequent Orders prohibiting speech through singing in worship of God, individually or as a group; (4) any shutdown or subsequent Orders prohibiting assembly of worshipers based on age or any other personal characteristics

such as health, wealth, race, gender, or other physical or emotional characteristic; (5) any Orders prohibiting Baptism or directing how the ritual is to be conducted; (6) any Orders prohibiting the Lord's Supper or directing how the ritual is to be conducted; and (7) expressing preferences or favoritism for the practices of one established religion over another.

- F. Under Counts II-V, award Plaintiff attorney's fees, costs, and pre and post judgment interest for this action.
- G. Require such other and further relief as the Court deems just and proper under the circumstances.

Respectfully Submitted,

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