

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY
(Newark Division)**

REV. KEVIN ROBINSON)	
)	
)	
Plaintiff,)	Case No.
)	
v.)	
)	
PHIL MURPHY , Governor of the)	
State of New Jersey, in his)	
official capacity,)	
)	
Defendant.)	

**COMPLAINT FOR CIVIL RIGHTS VIOLATIONS,
INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT**

Plaintiff, by and through counsel, complains as follows:

INTRODUCTION

1. This civil rights action, brought pursuant to 42 U.S.C. § 1983, challenges Executive Order 107 (2020), effective March 21, 2020 (“Order 107”), issued by defendant Governor Phil Murphy as a response to the COVID-19 epidemic pursuant to his purported “emergency powers” under the New Jersey Civil Defense and Disaster Control Act (“DCA”).

2. On the pretext of limiting the impact of COVID-19, Order 107 unconstitutionally bans all social, political and religious gatherings of any number, under any circumstances, while allowing numerous commercial gatherings on the premises of businesses deemed “essential,” including supermarkets, pet stores, liquor stores, laundromats and dry cleaners, medical marijuana dispensaries, convenience stores; the front offices, back offices and warehouses of “essential” businesses, and the offices, studios and on-the-scene teams of the “essential” media.

3. Order 107 thus declares all religious gatherings “non-essential.”

4. Under threat of criminal penalties, Order 107 has forced the closure of every Catholic church or chapel in the State of New Jersey to public worship, including the church of which Plaintiff is the pastor.

5. Based solely on Order 107, Plaintiff has been threatened by local law enforcement with arrest and criminal prosecution if he dares to offer a Mass or conduct any other public gathering in his church, which remains closed due to this threat.

6. Plaintiff seeks a declaratory judgment that Order 107, both on its face and as applied to him, violates the First and Fourteenth Amendments to the United States Constitution, and both interim and permanent injunctive relief barring its enforcement as to him and others similarly situated.

PARTIES

7. Plaintiff Father Kevin Robinson is a Catholic priest, ordained in 1991, who engages in priestly ministry in this District.

8. Defendant Phil Murphy is Governor of the State of New Jersey and is sued in his official capacity. At all times pertinent to this action Defendant and his subordinates have acted under color of State law.

JURISDICTION AND VENUE

9. This action raises federal questions under the First and Fourteenth Amendments of the United States Constitution and under federal law, 28 U.S.C. §§ 2201 and 2202 (Declaratory Judgments), as well as 42 U.S.C. §§ 1983, 1988, and 1920.

10. This Court has jurisdiction over these federal claims under 28 U.S.C. §§ 1331 and 1343.

11. This Court has authority to grant the requested injunctive relief under 28 U.S.C. § 1343(3), the requested declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Plaintiff's prayer for costs, including reasonable attorneys' fees, under 42 U.S.C. § 1988 and 28 U.S.C. § 1920.

12. Venue is proper in the District of New Jersey pursuant to 28 U.S.C. § 1391, as a substantial part of the events giving rise to the claims herein arose in this District.

FACTUAL ALLEGATIONS

13. Plaintiff is a duly ordained Catholic priest who offers Mass and provides the other sacraments of the Catholic Church to his congregation in a church building with appurtenant facilities in Essex County, New Jersey.

14. On March 21, 2020, Defendant issued Order 107 for the stated purpose of "reducing the rate of community spread of COVID-19." (Order 107 at 1)

15. Order 107 invokes Defendant's "emergency powers," citing the New Jersey Civilian Defense and Disaster Control Act (DCA) to justify its provisions. (Order 107 at 4)

16. Order 107 supersedes the "operative provisions" of prior Executive Order 104 (2020) ("Order 104"), issued March 16, 2020, but retains its "factual findings." (Order 107, ¶ 1).

17. Order 104 permitted "gatherings of persons in the State of New Jersey" under the following terms:

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

18. Order 107 eliminates the allowance of gatherings of “50 persons or fewer,” and declares that “All New Jersey residents shall remain home or at their place of residence” with the following nine exceptions (in pertinent part):

- obtaining goods or services from essential retail businesses...;
- obtaining takeout food or beverages...;
- seeking medical attention, essential social services, or assistance from law enforcement or emergency services;
- visiting family or other individuals with whom the resident has a close personal relationship...;
- reporting to, or performing, their job;
- walking, running, operating a wheelchair, or engaging in outdoor activities with immediate family members, caretakers, household members, or romantic partners while following best social distancing practices with other individuals, *including staying six feet apart*;
- leaving the home for an educational, *religious*, or political reason;
- leaving because of a reasonable fear for his or her health or safety; or
- leaving at the direction of law enforcement or other government agency.

Order 107 at ¶ 2 (emphasis added)

19. Order 107 now provides that “Gatherings of individuals, such as parties, celebrations, or other social events, are cancelled, unless otherwise authorized by any part of this Order.” (Order 107, ¶ 5)

20. The “gatherings of individuals” now forbidden by Defendant, in any number, include religious services, as Defendant’s official FAQ website specifically states:

Are churches and other houses of worship still offering services?:

Executive Order No. 107... *prohibits all gatherings* of individuals, such as parties, celebrations, or other social events, unless otherwise authorized by the Order. Residents should consult with their local houses of worship *to see what alternatives are being offered in place of in-person services.* (emphasis added)^{1/}

^{1/}[See,https://covid19.nj.gov/faqs/nj-information/general-public/are-churches-and-other-houses-of-worship-still-offering-services](https://covid19.nj.gov/faqs/nj-information/general-public/are-churches-and-other-houses-of-worship-still-offering-services)

21. On account of Order 107, all Catholic churches in New Jersey have been shuttered and Masses and other functions therein prohibited.

22. Order 107 further prohibits religious gatherings anywhere in the State of New Jersey, whether or not they take place in a church or chapel, indoors or outdoors.

23. Plaintiff has complied with the Order by not offering Mass for the faithful or presiding over any other religious gathering anywhere in New Jersey.

24. Order 107 provides that violators of the Order, and those who aid or abet them, are subject to arrest and criminal prosecution for “disorderly conduct” under N.J.S.A. App. A: 9-49 and 50, the criminal penalty provisions of the DCA.

25. While Order 107 permits leaving home for a “religious... reason” (Order, ¶ 5), leaving home to travel to a now-forbidden religious gathering is clearly forbidden under criminal penalty, as is driving someone to such a gathering, which would constitute aiding and abetting a violation of the Order.

26. On March 20, 2020, the day before Order 107 went into effect, a local police officer arrived at Plaintiff’s church and demanded that the Mass that was about to begin be cancelled and that the congregation disperse, even though Order 107 was not effective until the following day.

27. The officer was verbally aggressive, repeatedly stating that the Mass could not proceed because of the Governor’s order, thus making it clear that Plaintiff was subject to arrest while the members of his congregation were cowering in the basement in fear.

28. Only when the officer was informed by the local Police Chief via cell phone that Order 107 was not effective until the following day was his implicit threat of arrest withdrawn.

29. On Thursday, March 26, however, Plaintiff was advised by the same Police Chief via text message that “we do have charges for mass gatherings, ie [sic] parties, etc.... Hoping this turns around soon it’s crazy.”

30. In obedience to Order 107, Plaintiff has since complied with Order 107 by not offering Mass for the faithful or presiding over any other religious gathering anywhere in New Jersey.

31. While forbidding all religious gatherings under any circumstances, Order 107 permits numerous commercial gatherings at the premises of businesses deemed “essential” by Defendant, as follows:

- a. Grocery stores, farmer’s markets and farms that sell directly to customers, and other food stores, including retailers that offer a varied assortment of foods comparable to what exists at a grocery store;
- b. Pharmacies and alternative treatment centers that dispense medicinal marijuana;
- c. Medical supply stores;
- d. Retail functions of gas stations;
- e. Convenience stores;
- f. Ancillary stores within healthcare facilities;
- g. Hardware and home improvement stores;
- h. Retail functions of banks and other financial institutions;
- i. Retail functions of laundromats and dry-cleaning services;
- j. Stores that principally sell supplies for children under five years old;
- k. Pet stores;
- l. Liquor stores;

- m. Car dealerships, but only to provide auto maintenance and repair services, and auto mechanics;
- n. Retail functions of printing and office supply shops; and
- o. Retail functions of mail and delivery stores.

32. Order 107 places no limitation on the size of gatherings at the business premises deemed “essential,” but rather provides merely that “essential” businesses, “*wherever practicable*, provide pickup services outside or adjacent to their stores” and that they “shall abide by social distancing practices *to the extent practicable* while providing essential services,” including “*reasonable efforts* to keep customers six feet apart and frequent use of sanitizing products on common surfaces.” (Order 107 at ¶¶ 6-7)(emphasis added)

33. Order 107 places no limitation on the size of gatherings of employees in the office environments, backrooms or warehouses of businesses deemed “essential,” save for “best efforts to reduce staff on site to the minimal number necessary to insure that essential operations can continue,” with merely advisory examples of employees who, in Defendant’s judgment, “need to be physically present at their work site in order to perform their duties...” (Order, ¶ 11)

34. Order 107 also exempts the media from any restriction whatsoever: “Nothing in this Order shall be construed to limit, prohibit, or restrict *in any way* the operations of newspapers, television, radio, and other media services.” (Order 107, ¶ 19)(emphasis added)

35. Order 107 fails to mention, and thus leaves untouched, Order 104’s allowance of unlimited gatherings in “airports, bus and train stations...” (Order 104 at 1).

36. In completely forbidding all religious gatherings as “non-essential,” Order 107 denies religious gatherings the latitude afforded “essential” commercial gatherings: i.e. that social distancing practices be maintained “to the extent practicable,” that “reasonable efforts” be

made to keep people “six feet apart,” and that there be “frequent use of sanitizing products on common surfaces.”

37. In completely forbidding all religious gatherings as “non-essential,” Order 107 also denies religious gatherings the latitude accorded to the staffs of “essential businesses,” which are subject only to advisory suggestions but no limit on the size of those gathered on premises, and to the mass media, which are subject to no restrictions at all.

38. Religious gatherings in the pews of churches, which can easily accommodate social distancing, are comparatively small and discrete and manifestly pose far less of a risk of viral transmission than the favored commercial gatherings, which involve:

- (a) innumerable close interpersonal exchanges of goods and services every day of the week;
- (b) crowds and massive foot traffic as well as seated patrons in the favored retail businesses as well as in airports, train and bus stations;
- (c) the touching of countless objects for sale and common surfaces, including keypads and touch screens, by potentially millions of people in the State of New Jersey;
- (d) the close proximity of innumerable seated employees in the confined spaces of innumerable offices, backrooms and warehouses of essential businesses, and
- (e) the totally unregulated physical presence of innumerable seated employees in offices and studios, and gatherings of employees at the scenes of news coverage, in the course of mass media operations.

39. Plaintiff is willing to observe the same limitations Order 107 imposes on permitted “essential” gatherings on the premises of “essential businesses”: i.e., “abide by social distancing practices to the extent practicable,” “reasonable efforts to keep [congregants] six feet

apart and frequent use of sanitizing products on common surfaces.” (Order 107 at ¶¶ 6-7)(emphasis added)

40. Plaintiff’s congregation at Mass typically numbers around 50, the same number that was permitted for any and all gatherings under superseded Order 104 and is also now permitted under Connecticut Governor Ned Lamont’s Executive Order No. 7N, which specifically exempts religious gatherings from its limitation of other gatherings to no more than five people: “except that religious, spiritual or worship gatherings *shall not be subject to such increased restrictions*, and shall instead remain subject to the prohibition on gatherings of 50 or more people, provided that they employ reasonable and appropriate distancing measures.”^{2/}

41. Order 107 articulates no rationale whatsoever for treating religious gatherings as a greater threat to public health and safety than commercial gatherings that involve manifestly far greater risk of viral transmission among millions of potential customers or in the enclosed premises of the offices maintained by “essential” businesses and the media.

42. As the pleaded facts demonstrate, Order 107 irrationally, invidiously, and without any legitimate state purpose discriminates against religious gatherings in favor of secular commercial gatherings.

43. On April 15, 2020, Defendant admitted on national television, respecting his issuance of Order 107, that “I wasn’t thinking of the Bill of Rights when we did this.”^{3/}

44. On April 23, 2020, counsel for Plaintiff sent a demand letter to Defendant, with copies to the Acting Chief Counsel for the Governor and the Attorney General of New Jersey, advising that Order 107 is unconstitutional, seeking confirmation that Plaintiff was subject to

^{2/}See, <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7N.pdf?la=en>.

^{3/} See, <https://www.foxnews.com/media/tucker-carlson-phil-murphy-bill-of-rights>.

arrest and/or prosecution for disobeying the Order by offering Mass, and further advising that if there were no response within five (5) days, Plaintiff would pursue this action. (*See* Demand Letter, Exhibit A to this Complaint.) There has been no response to the demand letter.

45. On April 27, 2020, after having already extended Order 107 for 30 days from April 7, Defendant announced a further extension of the Order indefinitely.^{4/}

46. There is no sign that Defendant intends to relinquish his grip on the daily life of anyone present in the State of New Jersey, including Plaintiff, by any date certain.

47. Plaintiff seeks to offer Mass for his congregation on Sunday, May 3, 2020 and therefore seeks emergent relief from Order 107 via TRO.

COUNT I

Violation of the First and Fourteenth Amendments to the U.S. Constitution (Free Exercise of Religion) 42 U.S.C. § 1983

48. Plaintiff re-alleges and incorporates by reference the allegations in paragraphs 1-47 above.

49. Plaintiff's sincerely held religious belief compels him to offer the Mass and other Sacraments of the Catholic Church to his congregants as well as to preside over other religious gatherings in his church and elsewhere as required by his religion.

50. The Free Exercise Clause of the First Amendment to the U.S. Constitution protects Plaintiff's religious activities.

51. Defendant's interpretation and application of Order 107 substantially burdens Plaintiff's free exercise of his religious practices and beliefs by forbidding him to offer Mass or

^{4/} *See*, "NJ stay-at-home order extended indefinitely as Murphy outlines path to reopening" @ <https://www.pix11.com/news/coronavirus/gov-murphy-to-unveil-plan-to-responsibly-reopen-new-jersey>

preside over any gathering, including funerals, in his church or elsewhere in the State of New Jersey.

52. Order 107 is not a neutral law of general applicability because it contains numerous exemptions for secular gatherings on the premises of “essential businesses,” where much larger and much more frequent gatherings affect the purported state interest of “reducing the rate of community spread of COVID-19” far more than the religious gatherings of a Catholic congregation.

53. Order 107 does not advance a compelling state interest as applied to Plaintiff, nor is it the least restrictive means of accomplishing the stated purpose of “reducing the rate of community spread of COVID-19.”

54. Defendant and the State of New Jersey have less restrictive means of achieving any legitimate interest served by Order 107, as alleged in ¶ 36.

55. Order 107 is thus underinclusive and overbroad, both on its face and as applied, because it exempts numerous secular gatherings from its prohibitions while failing to regulate the prohibited gatherings, including religious gatherings, by the least restrictive means possible.

56. Order 107, both facially and as applied to Plaintiff, violates the Free Exercise Clause of the First Amendment as made applicable to the States by the Fourteenth Amendment.

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

58. Plaintiff has no adequate remedy at law for the violation of his constitutional rights.

COUNT II

**Violation of the First and Fourteenth Amendments to the U.S. Constitution
(Violation of Freedom Speech, Assembly and Expressive Association)
42 U.S.C. § 1983**

59. Plaintiff re-alleges and incorporates by reference the allegations in ¶¶ 1-55.

60. The First Amendment protects Plaintiff’s right to peaceably assemble together with the members of his congregation.

61. Said religious assemblies are intertwined with speech and expressive association, meaning the right to associate with others of like mind for a protected purpose.

62. As alleged above, Defendant and the State of New Jersey have less restrictive means of regulating gatherings for the stated purpose of “reducing the rate of community spread of COVID-19.”

63. Order 107, both facially and as applied to Plaintiff, violates his right to peaceably assemble, speak and expressively associate with others.

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

65. Plaintiff has no adequate remedy at law for the violation of his constitutional rights.

COUNT III

**Violation of the Fourteenth Amendment
(Equal Protection – Substantive Due Process)**

42 U.S.C. § 1983

66. Plaintiff re-alleges and incorporates by reference the allegations contained in ¶¶ 1-55 above.

67. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution guarantees equal protection of the laws, which requires that the State not treat the “suspect class” of religion differently from the class of similarly situated people or pass laws that burden First Amendment rights.

68. Order 107 treats the class of people who exercise freedom of religion by gathering with others for that purpose, including Plaintiff, differently from the similarly situated class of people who gather with others for the purpose of secular gatherings at retail stores, confined office spaces, back offices, warehouses, and the studios and other premises of media operations, even though both classes are subject to the risk of infection by or transmission of COVID-19.

69. Moreover, the class of those who gather for religious purposes in churches and chapels, mostly on Sundays, is plainly less subject to the risk of infection or transmission than those engaged in commercial transactions involving crowded offices, large crowds every day of the week, physical exchanges, and common surfaces that are touched by potentially millions of people, which makes the suspect classification of Order 107 even more irrational and invidious.

70. Order 107 cannot survive the strict scrutiny required of suspect classifications under the substantive due process component of the Equal Protection Clause as it is far from neutral and generally applicable and is not narrowly tailored to serve a compelling state interest.

71. Order 107, both facially and as applied, also violates Plaintiff’s fundamental rights to free exercise of religion, speech, assembly and expressive association as alleged above.

72. Even if Order 107 did not involve a suspect classification or violate fundamental rights, its total ban on religious gatherings while permitting numerous larger and riskier secular and commercial gatherings under modest limitations is not rationally related to a legitimate state interest and thus cannot survive even rational basis analysis under the Equal Protection Clause.

73. Alternatively, Order 107 cannot survive heightened scrutiny under the “hybrid-rights” theory the United States Supreme Court has recognized for purposes of Equal Protection analysis.

74. Order 107 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, including its substantive component.

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

76. Plaintiff has no adequate remedy at law for the violation of his constitutional rights.

COUNT IV

Violation of the First and Fourteenth Amendment

***Ultra Vires* State Action Under the DCA**

42 U.S.C. § 1983

77. Plaintiff re-alleges and incorporates by reference the allegations contained in ¶¶ 1-73 above.

78. Defendant’s “lockdown” of the entire State of New Jersey under the purported authority of the DCA is an *ultra vires* attempt to regulate every aspect of the daily lives of 9 million residents of the State of New Jersey: dictating for what reasons they may leave home; which businesses they may operate or patronize; which activities they may engage in and with whom they may engage in them; and banning every gathering of citizens the Governor deems “non-essential,” including all religious gatherings.

79. The DCA confers no such authority on the Governor. Under New Jersey law, executive orders under the DCA must have a rational relationship to the legislative goal of protecting the public and must be closely tailored to the scope of the current emergency situation.

80. The ban on all religious gatherings in the State of New Jersey is *ultra vires* the DCA and should be declared void and unenforceable, as it constitutes state action in violation of all the constitutional rights Order 107 infringes, as pleaded above.

81. In the absence of declaratory and injunctive relief voiding and enjoining Defendant's *ultra vires* acts, Plaintiff will be irreparably harmed.

82. Plaintiff has no adequate remedy at law for the violation of his constitutional rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court grant the following relief:

- A. A temporary restraining order restraining Defendant or his designates from enforcing Executive Order 107 (2020) to ban religious gatherings or to regulate them under any "social distancing requirements" different from those governing commercial gatherings under the Order; or, in the alternative, compelling Defendant to apply to all gatherings, including religious gatherings, the same 50-person limitation in Executive Order 104 (2020) with the "social distancing" protocol of Order 107;
- B. A preliminary and permanent Injunction so restraining Defendant;
- C. A declaratory judgment that Executive Order 107 (2020) is unconstitutional, both facially and as applied to Plaintiff;
- D. An award of costs of this litigation, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988; and
- E. Such other and further relief as this Court deems just and proper.

Dated: April 30, 2020

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'C. Ferrara', with a long horizontal stroke extending to the right.

Christopher A. Ferrara CF-7123
Special Counsel – Thomas More Society
420 Route 46 East – Suite 7
P.O. Box 10092
Fairfield, NJ 07004-6092
(973) 244-9895
cferrara@thomasmoresociety.org
Counsel for Plaintiff

EXHIBIT "A"



Thomas More SOCIETY

EASTERN REGIONAL OFFICE

420 Route 46 East, Suite 7
PO Box 10092
Fairfield, New Jersey 07004
TELEPHONE (973) 244-9895
FACSIMILE (973) 244-9897

April 23, 2020

The Honorable Phil Murphy
Governor of New Jersey
State House
125 West State Street
Trenton, New Jersey, 08625-0068

By Federal Express

Dear Governor Murphy:

I am Special Counsel to the Thomas More Society, a national public interest law firm that engages in civil rights advocacy and litigation on behalf of Catholics and other people of faith across the nation. I write to you on behalf of Father Kevin Robinson in respect to the “stay-at-home” Executive Order 107 (2020)(“Order 107”), issued in response to the COVID-19 epidemic under an invocation of your “emergency powers” (Order 107 at 4). Order 107 supersedes Executive Order 104 (2020)(“Order 104”) but retains its “factual findings.” (Order 107, ¶ 1)

Father Robinson is a Catholic priest who provides the Mass and Sacraments to sincere practitioners of the Catholic religion. His church with appurtenant facilities is located at 103 Gould Avenue, North Caldwell, New Jersey. Father Robinson seeks clarification of Order 107 as applied under the still-operative “factual findings” of Order 104, in particular the following language: “Gatherings of individuals... are cancelled, unless otherwise authorized by any part of this Order” (Order 107, ¶ 5)—meaning, apparently, *all* social, political and religious gatherings.

The FAQ section of your COVID-19 information website provides the following answer to the question “Are churches and other houses of worship still offering services?”:

*Executive Order No. 107... prohibits all gatherings of individuals, such as parties, celebrations, or other social events, unless otherwise authorized by the Order. Residents should consult with their local houses of worship to see what alternatives are being offered in place of in-person services.*¹

Given what appears to be the official interpretation of Order 107, all Catholic churches in New Jersey have been shuttered and Masses and other functions therein prohibited. Father Robinson has complied with that reading of the Order by closing his church to the public.

Order 107, however, also authorizes an exception to its sweeping “stay-at-home” directive for “leaving home for an educational, religious or political reason.” (Order 107, ¶ 2[7]). As attending Mass or some other religious function in a Catholic church involves leaving home for a

¹<https://covid19.nj.gov/faqs/nj-information/general-public/are-churches-and-other-houses-of-worship-still-offering-services>

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religious reason, there appears to be an internal conflict in the order. That is, how many people may leave home for the same religious purpose to be accomplished at the same place?

Further, the retained “factual finding” in Order 104, that “to mitigate community spread of COVID-19, it is necessary to limit the unnecessary movement of individuals in and around their communities,” recites no scientific or other empirical basis for the finding. On the other hand, Order 104’s abandoned allowance of 50-person or less gatherings—now replaced by Order 107’s blanket “stay-at-home” directive, except for a few permitted purposes—was at least supported by a guideline issued by the Centers for Disease Control (Order 104, ¶ 2, sixth “whereas” clause).

While appearing to prohibit all *religious* gatherings, regardless of size, Order 107 allows *commercial* gatherings of any size on the premises of selected “essential businesses” with heavy foot traffic, including supermarkets, pharmacies, gas stations, convenience stores, hardware and home improvement stores, banks, laundromats, pet stores, and liquor stores. (Order 107, ¶ 6)

Finally, Order 107 provides that violators of the Order, and those who aid or abet them, are subject to arrest and criminal prosecution for “disorderly conduct” under N.J.S.A. App. A: 9-49 and 50. In fact, Father Robinson was harassed by the local police the day before Order 107 went into effect, in very threatening terms, and was told by the police chief later on that charges will be laid if he opens the church.

Order 107 thus appears to involve radical infringements of freedom of speech, religion, expressive association, movement and assembly, as compared with superseded Order 104, which contained no “stay-at-home” directive and less drastically limited “gatherings” to 50 persons or less. (Order 104, ¶ 1) As you freely acknowledged during an appearance on Fox News on April 15: “So, *I wasn’t thinking of the Bill of Rights when we did this. We went to all — first of all — we went to the scientists who said people have to stay away from each other.*”²

Moreover, Order 107 irrationally and discriminatorily prohibits religious gatherings on the ground that they would further the spread of COVID-19 while permitting all manner of large commercial gatherings on the premises of “essential businesses” where the risk of spreading a contagion during the physical and interpersonal exchange of goods and services is obviously far greater, yet people are not required to “stay away from each other.” At a church service, by contrast, people can easily sit six feet away from each other while avoiding physical contact.

There is no rational basis for banning all religious gatherings while allowing numerous commercial gatherings on the pretext of health and public safety. The United States Supreme Court long ago made it clear that while a state’s emergency powers may permit temporary curtailment of constitutional rights during a genuine public health crisis, that curtailment must have some “real or substantial relation” to the crisis and may not involve measures that are “beyond all question, a plain, palpable invasion of rights secured by the fundamental law.” Jacobsen v. Massachusetts, 1097 U.S. 11, 31 (1905).

² <https://www.foxnews.com/media/tucker-carlson-phil-murphy-bill-of-rights>

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Furthermore, when government "prohibits religious activity while permitting non-religious activities, its choice 'must undergo the most rigorous of scrutiny.' That scrutiny requires [the state] to prove its interest is 'compelling' and its regulation is 'narrowly tailored to advance that interest.'" On Fire Christian Ctr., Inc. v. Fischer, No. 3:20-CV-264-JRW, 2020 WL 1820249, at *6 (W.D. Ky. Apr. 11, 2020)(striking down COVID-19 related ban on religious services).

We see no compelling government interest that dictates bans on all religious gatherings of any size while permitting many large gatherings in commercial premises, rife with commonly touched surfaces, including electronic keypads and items for sale. And even if it served a compelling government interest, Order 107 is far from narrowly tailored.

With these considerations in view, I hereby request confirmation from you, the Acting Chief Counsel, or the Attorney General (who are all receiving copies of this letter) of the following so that my clients may consider their legal options:

1. Is Father Robinson required by Order 107 to close the church premises at 103 Gould Avenue, North Caldwell, NJ?
2. Are Father Robinson and the members of his congregation forbidden to gather, in any number, for Mass or other public functions not only at said church premises but anywhere else in the State of New Jersey?
3. Are Father Robinson and those who might assist him subject to arrest and/or criminal prosecution if they gather for Mass or other public functions, in any number, at said church or elsewhere in the State of New Jersey?

If I have not received a satisfactory response to these questions within five (5) days from the date of this letter, or if the response is equivocal, my client will assume that you have required him to close the church premises and have prohibited him and his congregation from attending Mass or participating in any other gathering for a religious purpose, in any number, in violation of his civil and constitutional rights, and he will pursue legal remedies, including those available under 42 U.S.C. § 1983.

Sincerely,



Christopher A. Ferrara
Special Counsel

CAF:jao

xc: Honorable Gurbir S. Grewal, Attorney General
Acting Chief Counsel Robert L. Garrenger III, Esq.
Robert Drumm, Esq.
Rev. Kevin Robinson

JS 44 (Rev. 09/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 Rev. Kevin Robinson

(b) County of Residence of First Listed Plaintiff Fairfield (CT)
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Christopher A. Ferrara, Esq.
 420 Route 46 East, Suite 7
 Fairfield, New Jersey, 07004-1952

DEFENDANTS
 Phil Murphy, Governor of the State of New Jersey, in his official capacity.
 County of Residence of First Listed Defendant _____
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. Section 1983
 Brief description of cause: Suit to declare unlawful and enjoin enforcement of Defendant's Executive Order 107.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ Not applicable. CHECK YES only if demanded in complaint. JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 04/30/2020 SIGNATURE OF ATTORNEY OF RECORD s/ Christopher A. Ferrara

FOR OFFICE USE ONLY
 RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
District of New Jersey

REV. KEVIN ROBINSON

Plaintiff(s)

v.

PHIL MURPHY, Governor of the
State of New Jersey, in his
official capacity,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Phil Murphy
Governor of the
State of New Jersey
State House
125 West State Street
Trenton, New Jersey, 08625

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Christopher A. Ferrara, Esq.
420 Route 46 East, Suite 7
P.O. Box 10092
Fairfield, New Jersey, 07004-6092
Special Counsel to the
Thomas More Society

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: