

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

REV. DR. CHRISTOPHER ALAN BULLOCK,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	C.A.No. 1:20-cv-00674-CFC
GOVERNOR JOHN C. CARNEY, in his official capacity as the Governor of Delaware,	:	
	:	
Defendant.	:	

SECOND AMENDED VERIFIED COMPLAINT¹

1. This is a civil action for a temporary restraining order and/or a preliminary injunction to stop wholesale discrimination against peaceful religious worship, speech, assembly and association by the Governor of Delaware who is deliberately indifferent to the unconstitutional effect of his emergency orders as written and as applied to places of worship, during the present pandemic. Plaintiff seeks an injunction opening up religious worship within the sanctuaries of Delaware places of worship effective Sunday May 31, 2020, known by some as the feast of Pentecost, and declaratory relief on previous illegal orders

2. Plaintiff Rev. Dr. Christopher Allan Bullock (“Dr. Bullock”) believes the wholesale shutdown of religious worship has a severe racially discriminatory purpose and effect on the African-American faith community which is made up of many small churches and their parishioners, without the wealth of white churches and their parishioners, which and who can so easily switch to services on-line.

¹ Pursuant to Fed.R.Civ.P. 15(a)(2), Plaintiff files this Second Amended Verified Complaint with the consent of Defendant. A redlined copy is attached showing the changes made.

3. Dr. Bullock is a pastor in Wilmington, Delaware and is suffering ongoing irreparable harm and deprivation of his rights to the free exercise of religion, freedom of religious speech, religious assembly and religious association, as well as to be free of government establishment of religion under the First Amendment and to the equal protection of the laws under the Fourteenth Amendment.

I. JURISDICTION

4. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and (4), 1367, 28 U.S.C. §§ 2201 and 2202, and the Fourteenth Amendment to the U.S. Constitution. The cause of action arises under 42 U.S.C. § 1983. The claims arose in this judicial district. The state law claim is so related to the federal claims that they form part of the same case or controversy.

II. THE PARTIES

5. Plaintiff is a native of Wichita, Kansas with roots in Arkadelphia, Arkansas. He is the Founder and Pastor of the Canaan Baptist Church of Delaware, and previously was privileged to serve two other congregations: the 8th Street Baptist Church in Wilmington, Delaware, and the Progressive Baptist Church in Chicago, Illinois.

6. In November 2012, Dr. Bullock was overwhelmingly elected as the first African-American President of the New Castle County Council as a member of the Democratic Party.

7. He is a member of the National Baptist Convention USA, Inc., the Lott Carey Convention and the Omega Psi Phi Fraternity and also is the former Chairman of the Delaware Black Caucus. He has been honored by many local, national, and international organizations for his works, ministry, and civil rights and political activism.

8. Dr. Bullock earned his Doctor of Ministry degree from the United Theological

Seminary and completed his post-doctoral work at Harvard University Divinity School. Additionally, he earned a Master of Divinity degree from the Colgate-Rochester Divinity School/Crozer Seminary, and a Bachelor of Social Work degree from the University of Alaska-Anchorage.

9. He is a member of, active with, and an advocate for the various associations of African-American pastors representing such churches throughout the State of Delaware, most of which are small poor congregations of less than 100 members without technological expertise or the wealth to own and operate expensive computer equipment.

10. Aside from protecting his own individual constitutional rights with this civil action, in a representative capacity as the pastor of several thousand members of his own church he seeks to protect their own individual and group constitutional rights, and as a member of the associations of African-American pastors representing such churches throughout the State of Delaware, he seeks to protect their individual and group constitutional rights.

11. Dr. Bullock believes that defendant's wholesale shutdown of churches has a severe racially discriminatory effect on the African-American faith community which is made up of so many small churches and their parishioners without the wealth of white churches and their parishioners which and who can so easily switch to services on-line.

12. He also believes that the Governor's regulation of places of worship throughout this pandemic had a discriminatory purpose to single out places of worship because his policies are riddled with over 237 exceptions for similar secular activities such that his policies towards churches and other places of worship are neither neutral nor of general applicability.

13. The Governor's objectives are not pursued with respect to analogous non religious conduct.

14. The Governor's policies create a religious gerrymander.

15. Dr. Bullock intends to engage in a course of conduct invoking various interests protected by the Bill of Rights and the Fourteenth Amendment, his acts are proscribed by the Governor's Orders and related criminal law and are punishable by six months imprisonment, and the threat of prosecution for his conduct is credible.

16. Dr. Bullock's church is Canaan Baptist Church, an urban Baptist Church which serves as a vanguard of liberation, faith and empowerment through its Christian witness. Canaan's mission is to do ministry for the Master through the five-fold ministries of Worship, Discipleship, Fellowship, Service, and Evangelism. Acts 2:42-47 (KJV).

17. Its normal Sunday service is at 8:00 a.m. and also at 11:00 a.m., live and also on Facebook and YouTube.

18. A communion service to comply with the command of Jesus Christ to "this do in remembrance of me" is held once a month. Luke 22:19 (KJV). Adult Baptisms are held on a quarterly basis in the sanctuary behind the pulpit to comply with the command of the Scriptures – "I indeed baptize you with water." Matthew 3:11 (KJV). The adult is held by the pastor and immersed in water going backwards, just as Jesus Christ was baptized by John the Baptist almost 2,000 years ago. Luke 3:21-22 (KJV) also states –

Now when all the people were baptized, it came to pass, that Jesus also being baptized, and praying, the heaven was opened, and the Holy Ghost descended in a bodily shape like a dove upon him, and a voice came from heaven, which said, Thou art my beloved Son; in thee I am well pleased.

19. The membership role of the church lists 2,000 with 1,200 active members. Its very large church sanctuary is 10,950 square feet. The maximum attendance previously allowed by the fire marshal is 500 in the sanctuary at a service. The fellowship hall is used as an overflow

sanctuary and it holds 350.

20. Roughly 30 to 40% of Dr. Bullock's members are 65 years old or older. So under Defendant's Order of May 18, 2020, from 360 to 480 active members of my church are now barred by law from coming to my church for spiritual food.

B. Defendant

21. John C. Carney currently is the duly elected Governor of the State of Delaware having assumed office in January, 2017. He is sued in his official capacity for declaratory and injunctive relief.

III. FACTS GIVING RISE TO THE ACTION

A. The Central Role of Religious Worship in the Christian Faith – Worship, Assembly, Association, Preaching, Singing, Group Prayer and Communion at the Lord's Supper

22. 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).

23. 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.

24. According to St. Paul, Christians are pilgrims walking the earth – "These all died in faith, not having received the promises, but having seen them afar off, and were persuaded of them, and embraced them, and confessed that they were strangers and pilgrims on the earth."

Hebrews 11:13 (KJV).

25. 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.

26. This freedom is so important that it is still found in the Preamble of the Delaware Constitution of 1897 which states –

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

27. And then the first freedom found in the Delaware Constitution of 1897 is freedom of worship in Article I. Freedom of press and speech are not found until sections 5 and assembly is not found until section 16, both of Article I. That first freedom of Delaware 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)

28. Plaintiff has a sincerely-held religious belief that online services and drive-in services 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.

29. Plaintiff has a sincerely-held religious belief that his congregants are called by the Lord to begin, at this time, meeting in person in the sanctuary the Lord provided them for this purpose subject to social distancing and other healthy guidelines found on the church website, at <https://www.canaanbcde.org/coronavirus-update>.

30. 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).

31. As with other communities of Christian faith around the country, Plaintiff 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 (KJV).

32. Plaintiff has a sincerely held religious belief that physical, corporate gathering of believers each Sunday is a central element of religious worship commanded by the Lord. Dr. Bullock, his church members and others in African-American churches throughout Delaware desire to gather for a physical, corporate gathering of believers on Sunday, May 31, 2020, Pentecost, and on subsequent Sundays, and would do so but for those actions of the Defendant that are the subject of this Verified Complaint.

33. Plaintiff has a sincerely held central religious belief that the Lord's Supper,

communion, is required on a regular basis. Jesus Christ commanded “this do, in remembrance of me.” Luke 22:19 (KJV). The Lord’s Supper is commemorated once a month by Dr. Bullock and this command has now been twice denied by Governor Carney.

34. Plaintiff has a sincerely held central religious belief that speech, preaching and teaching from the pulpit is required on a weekly basis during worship. “And they devoted themselves to the Apostles teaching and to fellowship, to the breaking of bread and to prayer.” Acts 2:42 (NIV). The Governor has denied this speech from the pulpit on a weekly basis with his Orders.

35. Plaintiff has a sincerely held central religious belief that group singing must be a part of worship on every occasion. “Let the word of Christ dwell in you richly in all wisdom; teaching and admonishing one another in psalms and hymns and spiritual songs, singing with grace in your hearts to the Lord.” Colossians 3:16 (KJV) The Governor has denied this speech on a weekly basis with his Orders.

B. The Governor’s Earlier Orders

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

37. 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.

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

39. 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.

40. Pursuant to his 9th and 10th Modification Orders, directives with the force of law were issued to all churches commanding how they are to conduct any permitted worship services as designed by the State.

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).*

41. 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).

42. His detailed March 22nd Order (Fourth Modification) (Ex. B) defined a long universe of approximately 237 categories of “essential businesses,” activities permitted to operate, including, among many others, groceries, pharmacies, alcohol, beer and wine merchants, 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).” (Ex. B. at 16, item 12).

43. 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 can continue to operate within their structures provided social distancing, hand washing, hand sanitizing, and cleaning is followed. Id. at 5.

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

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

- 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.
- 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.
- 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 immediately below and in Ex. C.

46. 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.” (Id. para 1).

47. 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.*

48. In summary, initially Carney prohibited public and private gatherings, including religious, 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 another 237 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.

49. Attached as Ex. D 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 Carney’s Orders. Those persons were trusted to social distance, while worshipers of God were not trusted to social distance.

50. 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.

C. How the Faith and Religious Practice of Plaintiff, His Church and Others Is Adversely Affected

51. For Dr. Bullock there are few, if any, of his religious beliefs more important than regular Sunday group worship which is commanded by the Fourth Commandment handed down to Moses on Mt. Sinai, and which the Apostle Paul reiterated in the New Testament after the death and resurrection of Jesus Christ.

52. Besides assembly and association, required Sunday worship includes speech and

teaching on religious principles from the pulpit, group prayers, monthly celebration of the Lord's Supper, quarterly adult Baptisms in the sanctuary pulpit and group singing lifting up voices to God.

53. Plaintiff sincerely believes this, while his church and congregation he pastors holds similar beliefs. The faith community of African-American pastors and churches in Delaware agree with these things as well.

54. All these individuals have been required to violate their conscience under penalty of law since April 12, 2020 and for seven weeks now have had their conscience traumatized under the threat of arrest and criminal law prosecution. They have endured tyranny and suffered great emotional distress, anxiety and suffering.

55. The above referenced directives on how to adopt a new form of worship of God issued by Carney and his agents are purposefully discriminatory, arbitrary, irrational and capricious.

56. One service is allowed for one pastor and nine church members. Four hours of clean up is then required before a second Sunday service can begin.

57. To allow 100 church members to worship would require 11 six hour intervals, $(100/9=11.1)$ assuming just a two hour service, which is perhaps less than the norm in the African-American community, and a four hour clean up.

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

59. The limit of ten to a Sunday worship service by the Governor in effect was a wholesale complete denial of the right to religious exercise and worship in Delaware.

60. Meeting the needs of a small congregation of 100 was impossible under his orders.

61. On top of this, the order to simply act like a rich white church and use high tech devices to conduct worship on line also was impossible for the majority of African-American churches which serve the poorest of those living in our communities.

62. The alternatives presented by the Governor to plaintiff and those he represents were no alternatives at all in light of the alleged compelling need during the pandemic crisis. Nor were they narrowly drawn to allow consciences not to be violated or to allow some type of worship of God without violating the sanctity of one's conscience.

63. The ten person limit had a uncontrolled chilling effect on Plaintiff's religious freedom.

D. The Demand Letter

64. On behalf of Dr. Bullock, and acting on behalf of numerous Delaware citizens adversely affected by the Orders, "The Committee to Save Christmas" ("Committee"), a full two months after the State of Emergency began, directed a May 13, 2020 six page written petition for the redress of grievances to defendant Carney.

65. Enough time had passed, the curve had been flattened, hospitals and medical care in Delaware were no longer threatened to be overwhelmed, and Plaintiff and his church had been good citizens joining in the emergency effort.

66. The Committee claimed 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 relief. The entire letter is attached as Ex. E and is incorporated by reference herein.

E. Defendant's Response Came Two Days Later

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

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

69. But in Delaware, all that Carney 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 drive-up religious services would continue to be permitted in church parking lots. Allegedly vulnerable senior 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.

70. "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 Friday's bi-weekly coronavirus news conference.

71. The governor incorrectly claims that he never closed places of worship and instead listed religious organizations as "essential business" when stay-at home orders were issued and non-essential business were closed on March 24, 2020. But he reportedly admits: "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," he said. (WBOC online news story dated May 15, 2020). Defendant admitted the same at his May 15, 2020 press conference.

72. So he frankly admitted that he had closed all places of worship throughout the State.

73. This was a wholesale shutdown of religious worship for all Delaware churches. This was an unprecedented direct assault on the free exercise of religion and other First Amendment

freedoms.

74. His April 6th Order (Tenth Modification) had specifically addressed houses of worship by name, contrary to the Governor's assertions –

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)*

75. On May 15th, Carney issued a 25 page guide, effective June 1st, explaining the types of businesses he will allow to reopen at a 30% capacity, if they practice certain social distancing requirements:

- Arts & Culture industries including, but not limited to: museums, galleries, libraries, historical attractions and arts education institutions. This specifically includes 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 an open to the public speech at the Wilmington Public Library, but a small church of 100 can 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.

76. The only time the ten person limit is referenced is with respect to worship services, youth sports and gyms which can open for business but if they are having classes in confined spaces (i.e. yoga, exercise, etc...), can only have ten persons in each class.

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

78. In the May 15th, 25 page document, “Places of Worship” are 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.” So even after 2 ½ months of a State of Emergency, the same freedoms that numerous businesses and institutions throughout Delaware will now have, Carney did not allow for “Places of Worship.”

F. MAY 18TH THE GOVERNOR ENTERS ESTABLISHMENT CLAUSE ENTANGLEMENT TERRITORY

79. Three days later the Governor further entangled himself into designing religious worship services with four new pages of single spaced regulations for churches, but not for the 237 categories of essential businesses who were free to continue their operations, or those previously closed businesses he was going to partially reopen on June 1st. Ex. F. The pilgrims had fled the Church of England to the New World to escape such interference with religious conscience. 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).

80. The Governor issued detailed operating requirements for churches explaining how he will allow them to practice their religious beliefs. Among other things, he mandates 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. F at 1.

(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, Dr. Bullock 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. None of the approximately 237 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. Id.

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

(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. 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. 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. Id. at 3.

(7). Religious hymnals and prayer books are banned. Existing hymnals and prayer books may not be used for any purpose whatsoever. None of the approximately 237 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. Id.

(8). Churches are banned from using ushers or even passing a collection plate in order to collect tithes and offerings. 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 server to pass plates of food to their diners and other customers. Id. at 3.

(9). Any person 65 years old or more is banned from attending religious worship services. 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. Id. at 1.

(10). 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. 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. Id. at 2.

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

(12). The touching of microphones is completely banned. Churches are the only entity so singled out. No secular business or institution is similarly restricted in a comparable way. Id. at 2.

(13). Holy water is banned. Churches are the only entity so singled out. No secular business or institution is similarly restricted in a comparable way. Id. at 3.

(14). The Order forbids a Pastor from holding an adult they are baptizing. But Dr. Bullock's church baptizes adults in a pool of water behind the pulpit by the pastor grabbing and dunking the adult backwards into the water until the person is completely covered. Churches are the only entity so singled out. No secular business or institution is similarly restricted in a comparable way. Id. at 4.

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

G. DAMAGES

82. Plaintiff waives all claims for compensatory damages to which he would be entitled under the law.

IV. ALLEGATIONS REGARDING THE DEFENDANTS' CONDUCT

83. 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.

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

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

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

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

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

89. The Defendant either knew or showed a deliberately indifferent, negligent or reckless

disregard for the matter of whether his conduct violated federal constitutional rights.

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

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

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

93. 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.

94. The Defendants' actions were capricious, irrational, and arbitrary.

COUNT I - (First Amendment - Free Exercise - Strict Scrutiny of Orders that Are Neither Neutral Nor Generally Applicable)

95. Plaintiff repeats and realleges paragraphs 1-94 set out above.

96. Plaintiff has central sincerely held religious beliefs that Scripture is the infallible, inerrant word of the Lord Jesus Christ, and that they are to follow its teachings.

97. Plaintiff 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.

98. As stated above, the Plaintiff is also under Scriptural commands to celebrate the Lord's Supper at least monthly, to teach and to receive religious teaching weekly, to pray communally and to sing in communal worship of his God every Sunday. The Governor's Orders, on their face and as applied, target Plaintiff's central sincerely held religious beliefs by prohibiting all religious worship and gatherings.

99. The Governor's Orders, on their face and as applied, impermissibly burden Plaintiff's central sincerely held central religious beliefs, compel Plaintiff to either change those beliefs or to act in contradiction to them, and force Plaintiff to choose between the teachings and requirements of their sincerely held religious beliefs in the commands of Scripture and the State's imposed value system on penalty of six months imprisonment.

100. The Governor's Orders, on their face and as applied, place Plaintiff in an irresolvable conflict between compliance with the Governor's Orders and his central sincerely held religious beliefs.

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

102. The Governor's Orders, on their face and as applied, are neither neutral nor generally applicable, but rather specifically and discriminatory target the religious beliefs, speech, assembly, and viewpoint of Plaintiff. For example, there are currently no limits on occupancy of law firms or big box stores.

103. The Governor's Orders, on their face and as applied, constitute a substantial burden on Plaintiff's sincerely held central religious beliefs.

104. The Governor's Orders are a religious gerrymander.

105. 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.

106. 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.

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

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

109. The Governor's Orders, on their face and as applied, 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.

110. 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.

111. Plaintiff has no adequate remedy at law to correct the continuing deprivation of his most cherished liberties under the Delaware and U.S. Constitutions.

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

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

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

115. 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 II (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)

116. Plaintiff repeats and reallege paragraphs 1-115 set out above.

117. At Sunday worship services and other religious services Dr. Bullock engages in protected speech to the congregation on matters of religious, social and other protected concern. Defendant's actions have denied him the complete normal audience for his speech.

118. Defendants actions have denied Dr. Bullock, his church and others the freedom to assemble and associate to pursue religious, social and other protected concerns.

119. The Orders have mandated a particular form of online worship, and prohibited Communion services, or water Baptisms, and also prohibited association to pray or to sing in praise of God.

120. The Governor's Orders, on their face and as applied, even if they were neutral and generally applicable, specifically target the religious beliefs, speech, assembly, and the viewpoint of Plaintiff. The Orders involve several freedoms protected by the First Amendment.

121. The Governor's Orders, on their face and as applied, constitute a substantial burden on these several protected freedoms.

122. The State lacks a sufficient compelling, legitimate, or rational interest in the Governor's Orders to justify application of different standards to these protected Constitutional freedoms.

123. Even if the Governor's Orders restriction on these protected freedoms were supported by a compelling interest, it is not the least restrictive means to accomplish the government's purported interest.

124. The interests promoted is underinclusive.

125. The Governor's Orders, on their face and as applied, fail to accommodate Plaintiff's protected freedoms.

126. The Governor's Orders, on their face and as applied, specifically target Plaintiff's

protected freedoms 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.

127. The Governor's Orders are a religious gerrymander.

128. 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.

129. Plaintiff has no adequate remedy at law to correct the continuing deprivation of his most cherished liberties.

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

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

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

133. 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 III (Fourteenth Amendment - Equal Protection - Religion - Suspect Class - Strict Scrutiny)

134. Plaintiff repeats and realleges paragraphs 1-133 set out above.

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

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

137. The Governor's Orders draw explicit distinctions based on religion.

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

139. 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.

140. Plaintiff has no adequate remedy at law to correct the continuing deprivation of his most cherished liberties under the Delaware and U.S. Constitutions.

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

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

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

144. Plaintiff's constitutional right to be free of religion as the basis for governmental action has 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)

145. Plaintiff repeats and realleges paragraphs 1-144 set out above.

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

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

148. 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.

149. 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.

150. Plaintiff has no adequate remedy at law to correct the continuing deprivation of his most cherished liberties under the Delaware and U.S. Constitutions.

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

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

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

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

155. Plaintiff repeats and realleges paragraphs 1-154 set out above.

156. Attached at Exhibit G is Defendant's 18th Modification, dated May 18, 2020 (also found at D.I. 4 at Tab A on the court docket in this case).

157. Attached at Exhibit I is Defendant's 19th Modification, dated May 22, 2020 (also found at D.I. 7 at Tab B on the court docket in this case).

158. Attached at Exhibit J is Defendant's Guidance for Communities of Worship, dated May 23, 2020 (also found at D.I. 7 at Tab C on the court docket in this case).

159. Attached at Exhibit H is a factual timeline of some of the changes Defendant made to his various Orders and official Guidelines from approximately May 13, 2020 through May 23, 2020 (an earlier version of which is presently found at D.I. 7 at Tab A on the court docket in this case).

160. Among other things, Exhibit J dictates that certain state mandated procedures are required to be followed in conducting the Christian religious rite of Baptism.

161. In the words of Judge Colm Connolly of the U.S. District Court for the District of Delaware, on June 2, 2020, this guidance “has the force and effect of law, and it 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.” (Tr. of June 2, 2020 Court hearing at p. 8).

162. Such Baptismal religious rites are regularly conducted by Plaintiff, a Baptist Pastor of a large Baptist Church.

163. On June 2, 2020, Judge Connolly asked the five attorneys for the Defendant, all counsel from the Delaware Department of Justice, including the State Solicitor, the following direct question –

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?

(Id. at 7).

164. Counsel for the Defendant Governor responded and admitted, “I do not.” (Id.).

165. Although Exhibit J 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.

166. Defendant’s actions demonstrate a preference for particular religious societies or denominations.

167. Defendant's actions demonstrate a preference for particular modes of worship.

168. Defendant's actions interfere with or seek to control the rights of conscience.

169. Defendant's actions interfere with or seek to control the free exercise of religious worship.

170. Defendant's actions interfere 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.

171. The plain terms and meaning of Art. I, § 1 of the Delaware Constitution explicitly bars the Defendant Governor from taking the actions challenged by this lawsuit.

172. The position of the Governor of the State of Delaware was not created until Art. III, § 1 of the Delaware Constitution.

173. Art. I, § 1 of the Delaware Constitution traces its constitutional lineage back to Art. I, § 1 of the Delaware Constitution of 1792, and its historical lineage to the Declaration of Rights and Fundamental Rules of the Delaware State of 1776.

174. Defendant's actions at issue in this case violate not just the Delaware Constitution as it presently exists, but have been beyond the power of the Governor of Delaware since at least 1776, and for time immemorial.

175. 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.

176. Plaintiff has no adequate remedy at law to correct the continuing deprivation of his most cherished liberties under the Delaware and U.S. Constitutions.

177. There is a direct causal relationship between Defendant's actions and the harm

Plaintiff has suffered.

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

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

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

Wherefore, Plaintiff prays that the Court:

- A. Enter a declaratory judgment declaring the acts of Defendant Carney to be a violation of the Plaintiff's constitutional rights to religious worship in the Christian faith, to assembly, to association, to preaching, to prayer, to singing and celebration of the Lord's Supper and to the prohibition of government establishment of religion.
- B. Enter a declaratory judgment declaring the acts of Defendant Carney with reference to religious worship found in all of his Orders identified in this Verified Complaint to be a violation of the constitutional rights of Plaintiff.
- C. Under 28 U.S.C. § 2201, declare the rights and other legal relations of Plaintiff, despite the fact that he is not seeking injunctive relief, with such declaration having the force and effect of a final judgment or decree.
- D. Under 28 U.S.C. § 2202, grant any further necessary or proper relief based on the declaratory judgment or decree against the defendant whose rights have been determined by such judgment.
- E. Award Plaintiff attorney's fees, costs and pre and post judgment interest for this action.
- F. Require such other and further relief as the Court deems just and proper under the circumstances.

Respectfully Submitted,

THE NEUBERGER FIRM, P.A.

/s/ Stephen J. Neuberger
STEPHEN J. NEUBERGER, ESQ. (#4440)
THOMAS S. NEUBERGER, ESQ. (#243)
17 Harlech Drive, P.O. Box 4481

Wilmington, Delaware 19807
(302) 655-0582
SJN@NeubergerLaw.com
TSN@NeubergerLaw.com

MARTIN D. HAVERLY, ATTORNEY AT LAW
MARTIN D. HAVERLY, ESQ. (#3295)
2500 Grubb Road, Suite 240B
Wilmington, DE 19810
(302) 529-0121
Martin@HaverlyLaw.com

JACOBS & CRUMPLAR, P.A.
THOMAS C. CRUMPLAR, ESQ. (#942)
RAEANN C. WARNER, ESQ. (#4931)
750 Shipyard Drive
Wilmington, DE 19801
(302) 656-5445
Tom@JCDELaw.com
Raeann@JCDELaw.com

Of Counsel

JOHN W. WHITEHEAD, ESQ.
DOUGLAS R. MCKUSICK, ESQ.
THE RUTHERFORD INSTITUTE
P.O. Box 7482
Charlottesville, Virginia 22906-7482
(434) 978-3888
legal@rutherford.org

Dated: August 18, 2020

Attorneys for Plaintiff

**VERIFICATION OF REV. DR. CHRISTOPHER ALAN BULLOCK
UNDER 28 U.S.C. § 1746**

I, Rev. Dr. Christopher Alan Bullock, declare as follows:

1. This verification is declaration is based upon my personal knowledge. I am competent to testify.
2. I am a plaintiff in this case and I have reviewed the Verified Complaint.
3. All allegations that I have personal knowledge of are true.
4. All allegations of which I do not have personal knowledge, I reasonably believe to be true based upon the specified information, documents or both.

I declare under penalty of perjury under the laws of the United States of America that the foregoing factual statements and my intentions are true and correct.

Date

Rev. Dr. Christopher Alan Bullock