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ELKHORN BAPTIST CHURCH et al.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
IN AND FOR THE COUNTY OF BAKER

ELKHORN BAPTIST CHURCH, An
Oregon Non-Profit Corporation;
CALVARY CHAPEL NEWBERG, An
Oregon Non-Profit Corporation;
CALVARY CHAPEL LINCOLN
CITY, An Oregon Non-Profit
Corporation; CALVARY CHAPEL
SOUTHEAST PORTLAND, An
Oregon Non-Profit Corporation; NEW
HORIZON CHRISTIAN
FELLOWSHIP, An Oregon Non-Profit
Corporation; CAMAS VALLEY
CHRISTIAN FELLOWSHIP, An
Oregon Non-Profit Corporation;
PEOPLES CHURCH, An Oregon Non-
Profit Corporation; PREPARE THE
WAY, An Oregon Non-Profit
Corporation; BEND COMMUNITY
CHURCH, An Oregon Non-Profit
Corporation; COVENANT GRACE
CHURCH, An Oregon Non-Profit
Corporation; JEDIDIAH
McCAMPBELL, An Individual;
RONALD OCHS, An Individual;
BRIAN NICHOLSON, An Individual;
JAMES B. THWING, An Individual;
MARK RUSSELL, An Individual;
PHIL MAGNAN, An Individual;
RONALD W. RUST, An Individual;
TRAVIS HUNT, An Individual;
MASON GOODKNIGHT, An
Individual; MARK MAYBERRY, An
Individual; LORI MAYBERRY, An
Individual; BENJAMIN STEERS, An
Individual; MICHAEL CARROLL, An
Individual; KEVIN J. SMITH, An

Case No.:

**VERIFIED COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF [Or. R. Civ.
P. 79(1)(B)]**

Individual; POLLY JOHNSON, An
Individual; BENJAMIN BOYD, An
Individual; ANNETTE LATHROP, An
Individual; ANDREW S.
ANTANASOFF, An Individual;
SHERRY L. ATANASOFF, An
Individual; MICAH AGNEW, An
Individual; and ANGELA
ECKHARDT, An Individual,

Plaintiffs,

v.

KATHERINE BROWN, Governor of
the State of Oregon; and DOES 1
THROUGH 50, Inclusive,

Defendants.

INTRODUCTION

In responding to the currently ongoing worldwide coronavirus pandemic, KATHERINE “KATE” BROWN (“GOVERNOR”), Oregon’s presiding Governor and the Defendant in this proceeding, has exceeded her constitutional authority: Pursuant to Article X-A, § 6 of the Oregon Constitution, after GOVERNOR declares a public health emergency, GOVERNOR may only exercise her emergency powers for 30 days. If, in the judgment of GOVERNOR, conditions necessitate an extension of time to exercise her emergency powers to effectively respond to a public health emergency, she has lawful recourse by obtaining approval from three-fifths of each house of the Legislature before the prescribed 30-day period expires. Because GOVERNOR failed to avail herself of the constitutionally prescribed procedure, her initial executive order declaring the public health emergency, issued on March 8, 2020, terminated by operation of law on April 7, 2020, and all subsequent executive orders implementing or extending the original order are legally null and void.

1 That notwithstanding, GOVERNOR is using the threat of criminal sanctions
2 against Oregonians – including Plaintiffs – who do not comply with her expired
3 orders. Accordingly, the Plaintiffs named below seek (1) a judicial declaration that
4 Executive Orders 20-03, 20-12, and 20-24 have expired via operation of law, and
5 (2) a court order enjoining enforcement of the executive orders.

6 Based on the foregoing, the Plaintiffs in the herein proceeding, who are
7 named below, hereby allege as follows:

8 **PARTIES**

9 1. Plaintiffs are, and at all times herein were, U.S. citizens and residents
10 of Oregon.

11 2. Plaintiff ELKHORN BAPTIST CHURCH (“EBC”) is, and at all times
12 herein was, a religious non-profit corporation that operates a church in, and serves
13 the people of, the City of Baker City, in the County of Baker.

14 3. Plaintiff CALVARY CHAPEL NEWBERG (“CC-NEWBERG”) is,
15 and at all times herein was, a religious non-profit corporation that operates a church
16 in, and serves the people of, the City of Newberg, in the County of Yamhill.

17 4. Plaintiff CALVARY CHAPEL LINCOLN CITY (“CC-LINCOLN
18 CITY”) is, and at all times herein was, a religious non-profit corporation that
19 operates a church in, and serves the people of, the City of Lincoln City, in the
20 County of Lincoln.

21 5. Plaintiff CALVARY CHAPEL SOUTHEAST PORTLAND (“CC-
22 SOUTHEAST PORTLAND”) is, and at all times herein was, a religious non-profit
23 corporation that operates a church in, and serves the people of, the City of Portland,
24 in the County of Multnomah.

25 6. Plaintiff NEW HORIZON CHRISTIAN FELLOWSHIP (“NEW
26 HORIZON”) is, and at all times herein was, a religious non-profit corporation that

operates a church in, and serves the people of, the City of Klamath Falls, in the County of Klamath.

7. Plaintiff CAMAS VALLEY CHRISTIAN FELLOWSHIP (“CVCF”) is, and at all times herein was, a religious non-profit corporation that operates a church in, and serves the people of, the town of Camas Valley, in the County of Douglas.

8. Plaintiff PEOPLES CHURCH (“PEOPLES”) is, and at all times herein was, a religious non-profit corporation that operates a church in, and serves the people of, the City of Salem, in the County of Marion.

9. Plaintiff PREPARE THE WAY (“PTW”) is, and at all times herein was, a religious non-profit corporation that operates a ministry in, and serves the people of, the City of Bend, in the County of Deschutes.

10. Plaintiff BEND COMMUNITY CHURCH (“BCC”) is, and at all times herein was, a religious non-profit corporation that operates a ministry in, and serves the people of, the City of Bend, in the County of Deschutes.

11. Plaintiff COVENANT GRACE CHURCH (CGC, and collectively with EBC, CC-NEWBERG, CC-LINCOLN CITY, CC-SOUTHEAST PORTLAND, NEW HORIZON, CVCF, PEOPLES, PTW, and BCC the “CHURCHES”) is, and at all times herein was, a religious non-profit corporation that operates a ministry in, and serves the people of, the City of Roseburg, in the County of Douglas.

12. Plaintiff JEDIDIAH McCAMPBELL (“McCAMPBELL”) is, and at all times herein was, a congregant of Trinity Presbyterian Church in the City of Medford, in the County of Jackson.

1 13. Plaintiff RONALD OCHS ("OCHS") is, and at all times herein was, a
2 congregant of Trinity Presbyterian Church in the City of Medford, in the County of
3 Jackson.

4 14. Plaintiff BRIAN NICHOLSON ("NICHOLSON") is, and at all times
5 herein was, the pastor of Trinity Presbyterian Church in the City of Medford, in the
6 County of Jackson.

7 15. Plaintiff JAMES B. THWING ("THWING") is, and at all times herein
8 was, a pastor on the staff of Lake Bible Church, a religious non-profit organization
9 that operates a church in, and serves the people of, the City of Lake Oswego, in the
10 County of Clackamas.

11 16. Plaintiff MARK RUSSELL ("RUSSELL") is, and at all times herein
12 was, a member of the leadership team at Calvary Chapel Lebanon, a religious non-
13 profit organization that operates a church in, and serves the people of, the City of
14 Lebanon, in the County of Linn.

15 17. Plaintiff RONALD RUST ("RUST") is, and at all times herein was, a
16 resident of the County of Douglas and a pastor at CVCF.

17 18. Plaintiff TRAVIS HUNT ("HUNT") is, and at all times herein was, a
18 resident of the County of Douglas and a pastor at CVCF.

19 19. Plaintiff MASON GOODKNIGHT ("GOODKNIGHT") is, and at all
20 times herein was, a resident of the City of Roseburg, in the County of Douglas, and
21 the congregant of a local church.

22 20. Plaintiff MARK MAYBERRY is, and at all times herein was, a
23 resident of the City of Riddle, in the County of Douglas, and the congregant of a
24 local church.

21. Plaintiff LORI MAYBERRY is, and at all times herein was, a resident of the City of Riddle, in the County of Douglas, and the congregant of a local church.

22. Plaintiff BENJAMIN STEERS (“STEERS”) is, and at all times herein was, a resident of the City of Grants Pass, in the County of Josephine, and the congregant of a local church.

23. Plaintiff MICHAEL CARROLL (“CARROLL”) is, and at all times herein was, a resident of West Linn, in the County of Clackamas, and the congregant of a church in Portland, in the County of Multnomah.

24. Plaintiff KEVIN J. SMITH (“SMITH”) is, and at all times herein was, a resident of Portland, in the County of Multnomah, and the resident of a local church.

25. Plaintiff POLLY JOHNSON (“JOHNSON”) is, and at all times herein was, a resident of the City of Pendleton, in the County of Umatilla, and the congregant of a local church.

26. Plaintiff BENJAMIN BOYD (“BOYD”) is, and at all times herein was, a resident of the City of Enterprise, in the County of Wallowa, and the congregant of a local church.

27. Plaintiff ANNETTE LATHROP (“LATHROP”) is, and at all times herein was, a resident of the City of Joseph, in the County of Wallowa, and the congregant of a local church.

28. Plaintiff KEVIN J. SMITH (“SMITH”) is, and at all times herein was, a resident of Portland, in the County of Multnomah, and the congregant of a local church.

29. Plaintiff ANDREW S. ATANASOFF (“ANDREW ATANASOFF”) is, and at all times herein was, a resident of Oregon City, in the County of Clackamas, and the congregant of a local church.

30. Plaintiff SHERRY L. ATANASOFF (“SHERRY ATANASOFF”) is, and at all times herein was, a resident of Oregon City, in the County of Clackamas, and the congregant of a local church.

31. Plaintiff MICAH AGNEW (“AGNEW”) is, and at all times herein was, a resident of the City of Enterprise, in the County of Wallowa, and the pastor of a local church.

32. Plaintiff ANGELA ECKHARDT (collectively with McCAMPBELL, OCHS, NICHOLSON, THWING, RUSSELL, RUST, HUNT, GOODKNIGHT, MARK MAYBERRY, LORI MAYBERRY, STEERS, CARROLL, SMITH, JOHNSON, BOYD, LATHROP, SMITH, ANDREW ATANASOFF, SHERRY ATANASOFF, and AGNEW the “CHURCHGOERS”) is, and at all times herein was, a resident of the City of Burns, in the County of Harney, and the congregant of a local church.

33. Defendant KATHERINE "KATE" BROWN ("GOVERNOR") is, and at all times herein was, the governor of the State of Oregon.

34. The true names and capacities of Defendants DOES 1 THROUGH 50 (collectively the “DOES”), inclusive, are unknown to Plaintiffs, who thus sue said Defendants under such fictitious names. Each of the Defendants designated herein as one of the DOES is legally responsible for the events and happenings herein referred to and proximately caused injuries to Plaintiffs thereby, as herein alleged. Plaintiffs will seek leave of this Court to amend this Complaint to show the DOES’ names and capacities once they have been ascertained.

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36. Pursuant to ORS 14.060, the Circuit Court In and For the County of Baker (the “Court”) may exercise jurisdiction over any state official or officer, as such, or in virtue of such status. Furthermore, ORS 14.060 allows plaintiffs to bring suit in the county wherein the cause of suit, or some part thereof, arose. As illustrated below, this case concerns Defendant GOVERNOR’s executive orders affecting the entire State of Oregon, meaning all or part of Plaintiffs’ cause of action arose in every county in the state, including Baker County.

37. Plaintiffs refer to and hereby incorporates by reference the allegations set forth in Paragraphs 1 through 36 into this Paragraph as if fully set forth herein.

39. Plaintiff EBC hosts approximately 12 adults for Wednesday night Bible study and prayer on Wednesday nights. EBC also hosts children in its Discovery Kids program every Wednesday.

40. The coronavirus, aka COVID-19, is a novel infectious agent that may cause respiratory disease leading to serious injury or death. Discovered in late 2019, the coronavirus caused a worldwide pandemic that made its way into the United States as early as January 2020 and spread rapidly from there.

1 41. On March 8, 2020, in response to the imminent threat to public health
2 and safety presented by the coronavirus pandemic, Defendant GOVERNOR issued
3 Executive Order 20-03, which declared a statewide emergency in Oregon pursuant
4 to ORS 401.165 *et seq.* A copy of Executive Order 20-03 is attached hereto as
5 **Exhibit “A.”**

6 42. In Executive Order 20-03, Defendant GOVERNOR declared that the
7 state of emergency brought on by the coronavirus pandemic would be in effect for
8 60 days. *See* Ex. “A” [specifically, p. 3]. Executive Order 20-03 was thus set to
9 expire pursuant to its own terms on May 7, 2020. *See* Attached **Exhibit “B”** [a
10 page from the website TimeandDate.com showing the calculation of Executive
11 Order 20-03’s stated expiration date].

12 43. Soon after issuing Executive Order 20-03, Defendant GOVERNOR
13 began issuing a series of related executive orders aimed at preserving the public
14 health and safety. Chief among these orders, for purposes of this case, is Executive
15 Order 20-12, a copy of which is attached hereto as **Exhibit “C.”** Defendant
16 GOVERNOR issued Executive Order 20-12 on March 23, 2020. *Id.*

17 44. “To reduce the spread of COVID-19,” GOVERNOR declares in
18 Executive Order 20-12, “the United States Centers for Disease Control and
19 Prevention (CDC) has recommended community mitigation strategies to increase
20 containment of the virus and to slow transmission of the virus, including
21 cancellation of gatherings of people and social distancing in smaller gatherings.”
22 Based on the CDC’s recommendations, GOVERNOR declared in Executive Order
23 20-12 that “[i]t is essential to the health, safety, and welfare of the State of Oregon
24 that, to the maximum extent possible, individuals stay at home or at their place of
25 residence, consistent with the directives set forth in my Executive Orders and
26 guidance issued by the Oregon Health Authority.”

1 45. Executive Order 20-12 also prohibits what Defendant GOVERNOR
2 deems “non-essential social and recreational gatherings of individuals, outside of a
3 home or place of residence (e.g., parties, celebrations, or other similar gatherings
4 and events) ... regardless of size, if a distance of at least six feet between
5 individuals cannot be maintained.” *See* Ex. “C” [specifically, see p. 3, ¶ 1.a].

6 46. Although Executive Order 20-12 makes no specific reference to
7 gatherings of religious assemblies, neither does the order distinguish between
8 gatherings that Defendant GOVERNOR deemed essential and those she deemed
9 non-essential. Still, Executive Order 20-12 at least implicitly impinges on
10 Plaintiffs’ free exercise of religion, which is protected under both the First
11 Amendment of the U.S. Constitution and Article I, §§ 2 and 3 of the Oregon
12 Constitution. Such impingement especially exists because church services,
13 wedding ceremonies, and funerals can be classified as “celebrations.”

14 47. Plaintiff EBC and its congregants have complied with Executive
15 Order 20-12 even though EBC operates in one of four Oregon counties which,
16 according to the Oregon Health Authority (“OHA”), has had no confirmed
17 coronavirus cases – let alone deaths caused by or related to the disease – at any
18 point since Defendant GOVERNOR issued Executive Order 20-03. *See* Attached
19 **Exhibit “D”** [a county-by-county breakdown of coronavirus cases and deaths as of
20 May 4, 2020, from OHA’s website].

21 48. Twenty-four of Oregon’s 38 counties have had no coronavirus-related
22 deaths and relatively few coronavirus cases. *See* Ex. “D.” These counties include
23 Lincoln, where Plaintiff CC-LINCOLN CITY is located; Klamath, where Plaintiff
24 NEW HORIZON is located; Jackson, where Plaintiff McCAMPBELL, OCHS, and
25 NICHOLSON live and attend church; Douglas, where Plaintiff CVCF is located
26 and where Plaintiffs RUST, HUNT, and GOODKNIGHT live and attend church;

1 Deschutes, where Plaintiff PTW operates a ministry; and Wallowa, where Plaintiff
2 ECKHARDT lives and attends church. *Id.*

3 49. The counties of Josephine, where Plaintiff STEERS lives and attends
4 church, and Umatilla, where Plaintiff JOHNSON lives and attends church, have
5 only had one coronavirus-related death apiece despite having a combined 92
6 confirmed coronavirus cases. *See* Ex. “D.”

7 50. Only in the counties of Multnomah, Washington, and Marion, which
8 boast the three highest totals of confirmed coronavirus cases in the state, have the
9 death tolls climbed into double digits – and even then, the percentage of deaths
10 relative to the total number of cases in each county has not exceeded 6.1 percent.
11 *See* Ex. “D.”

12 51. Although they strongly believe, not unreasonably, that Executive
13 Order 20-12 impinges on their constitutionally protected religious rights to
14 assemble and worship corporately and do other acts that the Bible requires, the
15 Plaintiff CHURCHES – including and especially Baker County’s own EBC – have
16 thus far complied with Executive Order 20-12 for multiple reasons:

- 17 a. First, failure to comply with Executive Order 20-12 is punishable
18 as a Class C misdemeanor pursuant to ORS 401.990. *See* Ex. C
19 [pp. 3-4, ¶ 1.e]. CHURCHES do not want to expose themselves to
20 criminal liability, nor do they want their congregants to do so –
21 especially since they would face a 30-day jail sentence and/or a
22 fine of up to \$1,250. *Id.*
- 23 b. Second, even if they wanted to host gatherings such as Sunday
24 services, Bible studies, and youth group meetings – not to mention
25 special events such as religious conferences, weddings, and
26 funerals – CHURCHES might not logistically be able to do so

1 while observing the social distancing requirements set forth in
2 Executive Order 20-12. This is especially given that CHURCHES
3 vary in the size of their congregations, and their houses of worship
4 vary in size and layout. CHURCHES have already had to forego
5 services on Easter Sunday, arguably the most important holy day
6 on the Christian calendar, and are facing having to cancel services
7 on Mother's Day (Sunday, May 10, 2020), which is traditionally
8 another big day for church services.

- 9 c. Third, at the outset of the coronavirus pandemic, many, if not all,
10 CHURCHES shared Defendant GOVERNOR's concerns about
11 having too many people too close together indoors, thereby
12 increasing the risk of spreading the coronavirus, especially to the
13 persons most vulnerable to it, such as the elderly. However, given
14 that in many parts of Oregon, including and especially Baker
15 County, there have been few, if any, coronavirus cases – let alone
16 deaths – CHURCHES believe the risk is minimal, or at least has
17 been reduced drastically. *See* Ex. "D." Accordingly, CHURCHES
18 believe the breadth of Executive Order 20-03 and the orders
19 implementing it is no longer justified. Based on the final line of
20 Executive Order 20-12, however, [*see* ¶ 53, below], CHURCHES
21 have no idea how long it will be until GOVERNOR lets them
22 resume freely exercising their constitutionally protected religious
23 rights, and are at GOVERNOR's mercy until she does.
- 24 d. Fourth, CHURCHES believed any restrictions Executive Order 20-
25 12 placed on the free exercise of religion would be temporary.

1 52. The Plaintiff CHURCHGOERS likewise complied with Executive
2 Order 20-12 for many of the same reasons as the Plaintiff CHURCHES.

3 53. Executive Order 20-12 concludes by stating that the order is to
4 “remain[] in effect until terminated by the Governor.” *See* Ex. “C” [p. 8]. As of
5 this writing, Defendant GOVERNOR has not declared Executive Order 20-12
6 terminated.

7 54. Furthermore, the closing statement of Executive Order 20-12 indicates
8 the order could last beyond the 60-day expiration date set forth in Executive Order
9 20-03 – meaning that even if the current state of emergency terminated, Executive
10 Order 20-12 would still be in effect until GOVERNOR decides otherwise.

11 55. On May 1, 2020, Defendant GOVERNOR issued Executive Order
12 No. 20-24, a copy of which is attached hereto as **Exhibit “E.”** Executive Order
13 20-24 extends the current state of emergency until July 6, 2020.

14 **REQUEST FOR DECLARATORY RELIEF**

15 56. Plaintiffs refer to and hereby incorporate by reference the allegations
16 set forth in Paragraphs 1 through 55 into this Paragraph as if fully set forth herein.

17 57. ORS 28.020 permits persons “whose rights, status, or other legal
18 relations are affected by a constitution [or] statute ... [to] have determined any
19 question of construction or *validity* arising under any ... constitution [or] statute ...
20 and obtain a declaration of rights, status, or legal relations thereunder” (emphasis
21 added).

22 58. Article X-A, § 1(3) of the Oregon Constitution allows Defendant
23 GOVERNOR to declare catastrophic disasters within the state. Section 1(1) of
24 Article X-A defines “catastrophic disaster” to mean “a natural or human-caused
25 event that: (a) Results in extraordinary levels of death, injury, property damage or
26 disruption of daily life in this state; and (b) Severely affects the population,

1 infrastructure, environment, economy or government function of the state.” Article
2 X-A, § 1(2)(d) defines “catastrophic disaster” to include a “public health
3 emergency.”

4 59. The current coronavirus pandemic meets the definitions of
5 “catastrophic disaster” set forth in Article X-A, § 1(2)(d) of the Oregon
6 Constitution.

7 60. Section 6(1) of Article X-A declares that once Defendant
8 GOVERNOR has declared a state of emergency pursuant to § 1 – as she did on
9 March 8, 2020 [*see* Ex. “A”] – the state of emergency is only in effect for 30 days.
10 If GOVERNOR wishes to extend the state of emergency, Article 6(2) outlines a
11 procedure for doing so: Before the expiration of the prescribed 30 days,
12 GOVERNOR must convene the Legislature and obtain approval of a three-fifths
13 majority in each of the Legislature’s two houses.

14 61. Furthermore, Article X-A, § 6(5) declares that Defendant
15 GOVERNOR “may not invoke the provisions of” § 1 “more than one time with
16 respect to the same catastrophic disaster.” In other words, if GOVERNOR fails to
17 properly extend a state of emergency as required under § 6(2), she cannot
18 unilaterally extend the state of emergency by declaring the emergency anew.

19 62. Subsections (2) and (5) of Article X-A, § 6 exist to strike an
20 appropriate balance between allowing Defendant GOVERNOR the latitude to act
21 unilaterally in the event of a crisis endangering public health and safety and
22 ensuring that any infringement on constitutionally protected rights, however
23 necessary, is limited in duration. *See* Attached **Exhibit “F”** [relevant pages from
24 the voter pamphlet for Oregon’s 2012 general election – specifically, see p. 41,
25 which states that Article X-A “will maintain (Oregon’s) system of checks and
26 balances, allowing state government to effectively react to a critical and tragically

challenging event”]. It is thus imperative that GOVERNOR follow the procedure outlined in Article X-A to ensure that she does not disregard the constitutionally protected rights of Oregonians in perpetuity in the name of protecting public health and safety.

63. Defendant GOVERNOR neither convened the Legislature nor secured the votes required to extend the state of emergency pursuant to Article X-A, § 6(2) of the Oregon Constitution. *See* Attached **Exhibit “G”** [a copy of a news article from OregonLive.com, The Oregonian newspaper’s website, dated March 31, 2020, in which the president of the Oregon Senate declares that the Legislature would not convene to address the coronavirus pandemic].

64. Because Defendant GOVERNOR neither convened the Legislature nor secured the votes required to extend the state of emergency pursuant to Article X-A, § 6(2) of the Oregon Constitution, Executive Order 20-03, which GOVERNOR issued on March 8, 2020 [*see* Ex. “A”], effectively terminated by operation of law on April 7, 2020 – the order’s stated expiration date of May 7, 2020 notwithstanding. *See* Attached **Exhibit “H”** [a page from TimeandDate.com showing the calculation of Executive Order 20-03’s actual expiration date].

65. When Defendant GOVERNOR declared a state of emergency in response to the coronavirus pandemic, she declared that she did so pursuant to ORS 401.165 *et seq.* and made no mention of Article X-A, § 1 of the Oregon Constitution. *See* Ex. “A.” However, ORS 401.165 *et seq.* is not a means by which GOVERNOR may bypass the strictures of the Oregon Constitution, which she swore to uphold when she assumed the state’s highest office. *See* Ex. “F” [stating that Article X-A “assures that the Governor and the Legislature will be able to work *as a team* to meet the urgent needs of Oregonians who have been subjected to a catastrophic disaster” (emphasis added)]. Even though

1 GOVERNOR used the words “state of emergency,” not “catastrophic disaster,” the
2 term “catastrophic disaster,” as defined in Article X-A, § 1(1) and 1(2)(d), includes
3 “public health emergencies” such as the current coronavirus pandemic.

4 GOVERNOR thus effectively declared a statewide catastrophic disaster on March
5 8, 2020, even though she did not use the term “catastrophic disaster.” *See* Ex. “A.”

6 66. The Court should also note that Article X-A was added to the Oregon
7 Constitution by Oregon voters in the 2012 general election. *See* Ex. “F.” By
8 contrast, ORS 401.165 *et seq.* became law in 1949.¹ However broad the
9 emergency powers granted to Defendant GOVERNOR may have been in 1949,
10 Article X-A, § 6 narrowed them considerably, especially since the emergency
11 powers granted to GOVERNOR cannot exceed the bounds of the Oregon
12 Constitution. *See* Ex. “F.” If GOVERNOR is free to disregard the Oregon
13 Constitution under the circumstances presented here – especially given that Article
14 X-A prescribes a procedure that GOVERNOR is required to follow in
15 circumstances like those presented here – then she and future governors may
16 disregard it at whim so long as they claim to be doing so in the interest of
17 preserving public health and safety.

18 67. Based on the foregoing, Plaintiffs respectfully request that the Court
19 declare as follows:

- 20 a. Pursuant to Article X-A, § 6(1) of the Oregon Constitution, the
21 state of emergency that Defendant GOVERNOR declared via
22 Executive Order 20-03 on March 8, 2020, expired by operation of
23 law on April 7, 2020, 30 days after GOVERNOR issued the order
24 [*see* Ex. “G”].

25
26 ¹ *See* dilleradollar.wordpress.com/2020/04/24/governor-browns-emergency-orders-should-have-an-expiration-date/.

- 1 b. The 60-day duration set forth in Executive Order 20-03 is
2 unconstitutional on its face. Even assuming the 60 days will have
3 already lapsed when the Court hears this matter, Article X-A, §
4 6(2) of the Oregon Constitution effectively prohibits Defendant
5 GOVERNOR from dictating or extending the duration of a
6 catastrophic disaster via executive fiat. *See* Ex. “F.” GOVERNOR
7 failed to follow the procedure set forth in Article X-A, § 6(2) to
8 extend the state of emergency beyond the prescribed 30 days.
- 9 c. Executive Order 20-24 is likewise facially unconstitutional: Issued
10 on May 1, 2020, Executive Order 20-24 extends the
11 unconstitutional Executive Order 20-03 by an additional 60 days,
12 to July 6, 2020, and does so without the required three-fifths
13 approval of three-fifths of each house of the Legislature.
14 Executive Order 20-24 is also unconstitutional because Defendant
15 GOVERNOR failed to get the legislative approval required under
16 Article X-A, § 6(2) within 30 days of declaring the emergency, and
17 the prescribed 30 days had already lapsed by operation of law
18 when GOVERNOR issued Executive Order 20-24.
- 19 d. All executive orders that Defendant GOVERNOR issued in
20 furtherance of Executive Order 20-03, including and especially
21 Executive Order 20-12, are invalid. Executive Order 20-12 is also
22 unconstitutional, as it allows GOVERNOR to impinge
23 constitutionally protected rights for as long as she sees fit – even
24 after duration of the state of emergency set forth in her own orders
25 has terminated. Even if GOVERNOR may temporarily infringe on
26 constitutional rights in the face of a catastrophic disaster, she is not

1 free to infringe on them in perpetuity in the name of protecting
2 public health and safety.

3 e. Based on the foregoing, CHURCHES are free to resume holding
4 religious gatherings, and CHURCHGOERS are free to attend such
5 gatherings.

6 **REQUEST FOR INJUNCTIVE RELIEF**

7 68. Plaintiffs refer to and hereby incorporate by reference the allegations
8 set forth in Paragraphs 1 through 67 into this Paragraph as if fully set forth herein.

9 69. ORS 28.080 states, "Further relief based on a declaratory judgment
10 may be granted whenever necessary or proper."

11 70. Plaintiffs have been irreparably harmed every day beyond April 7,
12 2020, the date on which the state of emergency declared in Executive Order 20-03
13 ceased to exist by law pursuant to Article X-A, § 1 of the Oregon Constitution.
14 Specifically, pursuant to Executive Order 20-12, Plaintiffs have been restricted in
15 exercise of religious freedoms protected under Article I, §§ 2 and 3 of the Oregon
16 Constitution and the First Amendment of the United States Constitution.

17 71. Plaintiffs will continue to be irreparably harmed every day that
18 Executive Order 20-12 remains in effect.

19 72. Plaintiffs have no adequate remedy at law beyond injunctive relief
20 prohibiting Defendant GOVERNOR from enforcing Executive Order 20-12 and
21 any other executive orders that may impinge on Plaintiffs' constitutionally
22 protected religious freedoms.

23 73. Plaintiffs can demonstrate a reasonable likelihood of success on the
24 merits: Even if Defendant GOVERNOR is free to temporarily impinge on
25 constitutionally protected freedoms for 30 days after declaring a catastrophic
26 disaster pursuant to Article X-A, § 6(1), and even beyond that if she gets the

1 approval of three-fifths of each house of the Oregon Legislature within that 30-day
2 timeframe, Plaintiffs can show that the 30-day period lapsed without GOVERNOR
3 obtaining the required approval. Since GOVERNOR declared the current
4 catastrophic disaster on March 8, 2020, that means GOVERNOR's orders have
5 impinged on Plaintiffs' constitutionally protected rights every day since April 7,
6 2020, and will continue to do so for as long as Executive 20-12 remains in effect.

7 74. Based on the foregoing, the Court should grant Plaintiffs injunctive
8 relief – starting with a temporary restraining order, which Plaintiffs hereby request
9 pursuant to Or. R. Civ. P. 79, prohibiting Defendant GOVERNOR from enforcing
10 Executive Orders 20-12, 20-24, and any other executive order issued subsequently
11 to, and seeking to implement, Executive Order 20-03.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

14 **ON ALL CAUSES OF ACTION:**

- 15 1. A judicial declaration that Executive Orders 20-03, 20-12, and 20-24
16 have expired by operation of law;
- 17 2. An injunction enjoining enforcement of Executive Orders 20-03, 20-
18 12, and 20-24 against Plaintiffs;
- 19 3. Attorney's fees and costs associated with bringing and maintaining
20 this action in accordance with the law; and
- 21 4. For such other and further relief as the Court may deem proper.

22
23 Dated: May 6, 2020

PACIFIC JUSTICE INSTITUTE

24 /s/ RAY D. HACKE

25 Ray D. Hacke

26 Attorney for Plaintiffs


ELKHORN BAPTIST CHURCH *et al.*

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VERIFICATION

Under penalty of perjury under the laws of the State of Oregon, the undersigned certifies that the statements set forth in this instrument are true and correct except as to matters therein stated to be on information and belief, if any, and as to those matters, and as to such matters, the undersigned verily believes the same to be true.

Date: May 6, 2020


Tim Fisher
Pastor
Elkhorn Baptist Church