

No. 20-1811

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

ELIM ROMANIAN PENTECOSTAL CHURCH, and
LOGOS BAPTIST MINISTRIES,

Plaintiffs–Appellants

v.

JAY R. PRITZKER,
in his official capacity as Governor of the State of Illinois,

Defendant–Appellee

On Appeal from the United States District Court
for the Northern District of Illinois
In Case No. 1:20-cv-02782 before The Honorable Robert W. Gettleman

**PLAINTIFFS-APPELLANTS' EMERGENCY MOTION
TO SUPPLEMENT THE RECORD**

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Pursuant to Fed. R. App. P. 10(e)(2)(C) and 10(e)(3), Plaintiffs–Appellants, ELIM ROMANIAN PENTECOSTAL CHURCH and LOGOS BAPTIST MINISTRIES (collectively, “Churches”), on an emergency basis,¹ move the Court for leave to supplement the record with the following factual developments which could not have been included or discussed in the briefing of this appeal because they occurred after the June 5, 2020 completion of briefing:²

A. The World Health Organization Has Stated That, While Asymptomatic Spread of COVID-19 Is Not Fully Known Yet, It Appears From Current Data to Be “Very Rare.”

1. Notwithstanding the Governor’s contention in the first line of his brief that “COVID-19 . . . spreads easily through respiratory transmission, including by asymptomatic individuals,” (Gov. Br. at 4), and that “the virus spreads invisibly and rapidly, including by asymptomatic individuals,” (*id.* at 21), on June 8, 2020 the World Health Organization, through its technical lead for coronavirus response and head of emerging diseases unit, said in a media briefing that “from the data we have, it still seems to be **rare that an asymptomatic person actually transmits** onward

¹ Oral argument of this appeal is scheduled for June 12, 2020, two days away.

² The Governor agrees that “[t]his Court may take judicial notice of this information and other external sources” including “official documents and newspapers” (Gov. Br. at 4 n.2 (citing authorities)), and the Governor’s brief cites to numerous online news articles and sources. (*See e.g., id.* at n.4, n.13, n.16, n.20, n.21, n.22, n.23, n.24, n.28, and n.35).

to a secondary individual,” and that “countries who are doing very detailed contact tracing” and who are “following asymptomatic cases,” are “not finding secondary transmission onward. **It is very rare.** . . . It still appears to be rare that an asymptomatic individual actually transmits onward.” Jacqueline Howard, *Coronavirus spread by asymptomatic people ‘appears to be rare,’ WHO official says*, CNN, June 9, 2020, <https://www.cnn.com/2020/06/08/health/coronavirus-asymptomatic-spread-who-bn> (last visited June 10, 2020) (emphasis added).³

2. The same official acknowledged that “more research and data are needed to ‘truly answer’ the question of whether the coronavirus can spread widely through asymptomatic carriers,” but the data so far from countries who are “doing very detailed contact tracing” and “following asymptomatic cases” reveals that “**It’s very rare.**” William Feuer and Noah Higgins-Dunn, *Asymptomatic spread of coronavirus is ‘very rare,’ WHO says*, CNBC, June 9, 2020, <https://www.cnbc.com/2020/06/08/asymptomatic-coronavirus-patients-arent->

³ Cf. Appellants’ Br. at 10 (noting that, as part of the many precautions they have taken, Churches have issued stay-home admonitions to COVID-19 symptomatic individuals or those in contact with them, and are taking the temperatures of all attendees as a condition of admittance to a religious service).

spreading-new-infections-who-says.html (last visited June 10, 2020) (emphasis added).⁴

3. On the following day, June 9, 2020, the same WHO Official stood by her conclusions that the data reveals asymptomatic transfers to be “very rare,” but clarified that “much remains unknown about asymptomatic transmission”; “[w]e do know that some people who are asymptomatic, or some people who do not have symptoms, can transmit the virus on”; and “[t]here is still too much unknown about this virus and still too much unknown about its transmission dynamics.” William Wan and Miriam Berger, *Are asymptomatic people spreading the coronavirus? A WHO official’s words spark confusion, debate*, The Washington Post, June 9, 2020, <https://www.washingtonpost.com/health/2020/06/09/asymptomatic-coronavirus-spread-who/> (last visited June 10, 2020). “While asymptomatic transmission does occur, **no one knows for sure how frequently it happens.**” *Id.* (emphasis added).⁵

⁴ Cf. Appellants’ Reply Br. at 20-21 (noting that, in both anecdotes of suspected COVID-19 transfers at a religious service offered by the Governor, the suspected spread was traced to **symptomatic** individuals.)

⁵ Cf. Appellants’ Reply Br. at 18-19 (“government ‘must demonstrate that the recited harms are real, not merely conjectural;’” the “alleged harms cannot be ‘mere speculation or conjecture;’” and “evidence that the risk of contagion is heightened in a religious setting . . . is lacking.” (quoting *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 664 (1994); *Edenfield v. Fane*, 507 U.S. 761, 770 (1993); and *Tabernacle Baptist Church, Inc. v. Beshear*, No. 3:20-cv-00033-GFVT, 2020 WL 2305307 (E.D. Ky. May 8, 2020))).

B. The Governor Is Ignoring His Own Stated Concerns Regarding the Spread of COVID-19 Through Speech or Attendance at Large Gatherings Exercising First Amendment Rights.

4. Notwithstanding the Governor’s contention that “the virus can spread between people interacting in close proximity—for example, speaking” (Gov. Br. at 5), and that “[s]cientific research demonstrates that when an infected individual speaks or sings, they project respiratory droplets to which the COVID-19 virus attaches . . . [and the droplets] can remain suspended in the air for several minutes, travelling several feet and putting others at risk of inhaling the virus,” (*id.* at 13), on June 7, 2020 the Governor attended and spoke at a Chicago-area “Black Lives Matter” protest with “hundreds of people” present. *Chicago-Area Protests: Naperville Demonstrations, Pritzker Joins March*, NBC Chicago, June 9, 2020, <https://www.nbcchicago.com/news/local/chicago-area-protests-lightfoot-promises-reforms-pritzker-to-join-march/2286120/> (last visited June 10, 2020).

5. Video of the event shows the Governor walking and speaking within **inches** of numerous people, even making **body contact** with them in the process:



Id. at embedded video 0:18.

6. Video of the event also shows the Governor speaking, screaming and chanting loudly and repeatedly, “Black Lives Matter! Black Lives Matter! Black Lives Matter! . . .”, without any facial covering, in a manner encouraging a similar chanting response from the hundreds of non-socially distant protesters in attendance:



Id. at embedded video 0:30.

7. The following day, on June 8, 2020, the Governor attended another large protest in Matteson, Illinois, where he marched for an extended period of time with other protestors, inches away from them, and touching the same banner as others:



Rick Pearson, *Republicans rip Pritzker as social distancing hypocrite as he joins protests; he hits back on Trump conspiracy tweet*, Chicago Tribune, June 9, 2020, <https://www.chicagotribune.com/politics/ct-coronavirus-pritzker-trump-protests-george-floyd-congress-20200609-bifn4ekl6bewdhxtujmdplkfp-story.html> (last visited June 10, 2020).

8. At a subsequent news conference, the Governor answered those who criticized his inconsistency on social distancing as hypocritical by stating:

I go places, and it's very difficult to get socially distant when an awful lot of people show up, and I'm not going to run away. ... Especially at this moment, **it's important to express ourselves. It's important to stand up for people's First Amendment rights**, and I'm talking about the peaceful protesters across the state. ... It's important to have the governor stand with them on issues that are important to the state and progress that we need to make.

Id. (emphasis added).

9. The protests which the Governor is attending, speaking at, and encouraging, are part of a larger social movement currently taking place in Illinois (and the rest of the nation), with one protest march in Chicago on June 6, 2020 drawing as many as 30,000 non-socially distanced participants, screaming, chanting, speaking, yelling and singing, without any interference from the Governor on COVID-19 grounds:



Ben Pope, *George Floyd rallies in Chicago: 30,000 protestors rally in Union Park, march through streets*, Chicago Sun-Times, June 6, 2020, <https://chicago.suntimes.com/2020/6/6/21282567/george-floyd-protests-chicago-rally-june-6> (last visited June 10, 2020).

10. According to the Governor, “Illinois is now in Phase 3” of the Governor’s “Reopen Illinois” five-phase plan, and Phase 3 purports to limit gatherings to 10-persons. (Gov. Br. at 8).

WHEREFORE, for good cause shown, Appellants respectfully request that the Court grant leave for the record to be supplemented with these factual developments that have occurred since the completion of briefing, which could not have been included or discussed in the briefs.

Respectfully submitted:

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1. This document complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A). Not counting the items excluded from the length by Fed. R. App. P. 32(f), this document contains 1,246 words.

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DATED this June 10, 2020.

/s/ Horatio G. Mihet _____
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed via the Court's ECF filing system and therefore service will be effectuated by the Court's electronic notification system upon all counsel or parties of record:

DATED this June 10, 2020.

/s/ Horatio G. Mihet _____
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