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' PETITION FOR REHEARING EN BANC

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1. The full name of every party that the attorney represents in the case:

   Elim Romanian Pentecostal Church, and
   Logos Baptist Ministries

2. The names of all law firms whose partners or associates have appeared for Plaintiffs–Appellants in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

   Liberty Counsel; Mauck & Baker, LLC

3. If the party, amicus or intervenor is a corporation:

   i. Identify all its parent corporations, if any; and

   N/A

   ii. list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

   N/A

4. Provide information required by FRAP 26.1(b)—Organizational Victims in Criminal Cases:

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5. Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

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DATED this July 10, 2020.

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   ii. list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

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TABLE OF CONTENTS

DISCLOSURE STATEMENTS i

TABLE OF CONTENTS vii

TABLE OF CITATIONS ix

GROUNDS FOR REHEARING EN BANC 1

BACKGROUND FACTS 4

A. Restrictions and Exemptions Under Governor Pritzker's Orders. 4

B. Unique Requirements for Religious Worship. 5

C. Enforcement Actions Against Churches' Worship. 5

ARGUMENT 7

I. THE PANEL DECISION CONFLICTS WITH SUPREME COURT PRECEDENT AND SPLITS FROM THE SIXTH CIRCUIT ON THE EXCEPTIONALLY IMPORTANT QUESTION OF WHETHER THE GOVERNOR'S COVID-19 EXECUTIVE ORDERS, WHICH IMPOSE UNIQUE RESTRICTIONS ON CHURCHES' RELIGIOUS EXERCISE, MUST SATISFY STRICT SCRUTINY. 7

A. The Panel Disregarded the Supreme Court's *Lukumi* Decision Requiring Strict Scrutiny. 7

B. The Panel's Value Judgments on the Importance of Worship Violate the Strict Scrutiny Principles of *Lukumi*. 9

C. The Panel Decision Conflicts With Sixth Circuit Decisions Which Correctly Apply *Lukumi* to COVID-19 Executive Orders and Reject the Century-Old *Jacobson* as a Pandemic Exception to Free Exercise Principles. 11

II. THE PANEL DECISION CONFLICTS WITH SUPREME COURT PRECEDENT ON WHETHER CHURCHES' IRFRA CLAIMS MAY BE BROUGHT IN FEDERAL COURT. 15

CONCLUSION 19

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS.....20

CERTIFICATE OF SERVICE 20

TABLE OF CITATIONS

Cases

Berean Baptist Church v. Cooper, No. 4:20-cv-81-D,
2020 WL 2514313 (E.D.N.C. May 16, 2020) 15

C.L.U.B. v. City of Chicago, No. 94 C 6151,
1996 WL 89241 (N.D. Ill. Feb. 27, 1996) 18

Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah,
508 U.S. 520 (1993).....1,2,7,8,9,10,11,12

City of Boerne v. Flores, 521 US. 507 (1997) 17,18

City of Kankakee v. New York Cent. R. Co., 55 N.E.2d 87 (1944).....7

College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board, 527 U.S. 666 (1999).....16

Edelman v. Jordan, 415 U.S. 651, 673 (1974) 3,16,18

Elim Romanian Pentecostal Church v. Pritzker, 962 F.3d 341,
2020 WL 3249062 (7th Cir. June 16, 2020).....*passim*

Employment Division v. Smith, 494 U.S. 872 (1990) 15,17,18

First Baptist Church. v. Kelly, No. 20-1102-JWB,
2020 WL 1910021 (D. Kan. Apr. 18, 2020).....15

Jacobson v. Massachusetts, 197 U.S. 11 (1905) 11,14,15

Lindstrom v. State of Ill., 632 F. Supp. 1535 (N.D. Ill. 1986).....18

Madyun v. Franzen, 704 F.2d 954 (7th Cir. 1983) 18

Maryville Baptist Church, Inc. v. Beshear,
957 F.3d 610 (6th Cir. 2020) 2,10,11,15

On Fire Christian Ctr., Inc. v. Fisher,
No. 3:20-CV-264-JRW, 2020 WL 1820249 (W.D. Ky. Apr. 11, 2020).....9

Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89 (1984).....16

Roberts v. Neace, 958 F.3d 409 (6th Cir. 2020).....2,11,12,15

Sherbert v. Verner, 374 U.S. 398 (1963).....14,17

South Bay United Pentecostal Church v. Newsom,
959 F.3d 938 (9th Cir. 2020).....13,14

Sweezy v. New Hampshire, 354 U.S. 234 (1957).....14

Thomas v. Rev. Bd. of Ind. Emp. Security Div., 450 U.S. 707 (1981).....10

United States v. Ballard, 322 U.S. 78 (1944).....10,11

Wisconsin v. Yoder, 406 U.S. 205 (1972).....17

Constitutions

U.S. Const. amend I.....*passim*

U.S. Const. amend XI.....15

Statutes

42 U.S.C. § 2000bb.....17,18

775 ILCS 35, Illinois Religious Freedom Restoration Act.....15,16,17,18

775 ILCS 35/10.....17,18

Rules

Fed. R. App. P. 35.....1,2,3

Other Authorities

Josh Blackman, *Judge Easterbrook admits what was implicit in Chief Justice Roberts' South Bay Decision*, The Volokh Conspiracy
(June 17, 2020, 5:22 PM).....10

Matthew.....10

GROUNDS FOR REHEARING EN BANC

In the Panel decision, reported at *Elim Romanian Pentecostal Church v. Pritzker*, 962 F.3d 341, 2020 WL 3249062 (7th Cir. June 16, 2020) [hereinafter the "Opinion"], the Court affirmed the district court's denial of a preliminary injunction for Plaintiffs–Appellants ("Churches"), who sought to enjoin enforcement of the COVID-19 executive orders of Defendant–Appellee, Governor Pritzker, which impose a unique, 10-person limit on religious worship services while exempting from numerical limit myriad business and nonreligious activities—even nonreligious activities in the same church building where religious worship is restricted. Pursuant to Rule 35(b)(1), Churches state the following grounds for rehearing en banc:

(1)(a) The Panel Opinion conflicts with the Supreme Court's decision in *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993) [hereinafter *Lukumi*], where the Court illuminated the constitutional tests of neutrality and general applicability, failing which a law burdening the free exercise of religion must satisfy strict scrutiny. 508 U.S. at 531–32. Specifically, the *Lukumi* Court held, a law "fall[s] well below the minimum standard necessary to protect First Amendment rights" when the government "fail[s] to prohibit nonreligious conduct that endangers [the government's asserted] interests in a similar or greater degree" than the prohibited religious conduct. *Id.* at 543. The Panel Opinion entirely

disregards and conflicts with *Lukumi* because the Panel upheld Governor Pritzker's executive orders, without subjecting them to strict scrutiny, even though *the Panel agreed* they "fail to prohibit nonreligious conduct that endangers [the Governor's asserted COVID-19] interests in a similar or greater degree" than the prohibited religious worship. (*See* Op. at *6 ("So we do not deny that warehouse workers and people who assist the poor or elderly may be at much the same risk . . . .").) Consideration by the full Court is therefore necessary to secure and maintain fidelity to Supreme Court precedent and uniformity of this Court's decisions. *See* Fed. R. App. P. 35(b)(1)(A).

(b) The Panel Opinion also directly conflicts with two authoritative decisions of the United States Court of Appeals for the Sixth Circuit, *Roberts v. Neace*, 958 F.3d 409 (6th Cir. 2020), and *Maryville Baptist Church, Inc. v. Beshear*, 957 F.3d 610 (6th Cir. 2020), which are the only other authoritative circuit decisions on the same issue. In *Roberts*, for example, the Sixth Circuit applied strict scrutiny and enjoined enforcement of the Kentucky Governor's executive orders prohibiting a church's in-person worship services where the orders' "serial exemptions for secular activities pose comparable public health risks." 958 F.3d at 614–16. Thus, this proceeding presents an exceptionally important question for consideration by the full Court. *See* Fed. R. App. P. 35(b)(1)(B).

(2)(a) The Panel Opinion conflicts with the Supreme Court decision in *Edelman v. Jordan*, 415 U.S. 651 (1974), in which the Supreme Court articulated the alternative tests for determining whether an enactment of state law has waived the state's Eleventh Amendment immunity from suit in federal court: "We will find waiver only where stated by the most express language or by such overwhelming implications from the text as will leave no room for any other reasonable construction." *Edelman*, 415 U.S. at 673 (cleaned up). The Panel Opinion conflicts with *Edelman* because the Panel held Governor Pritzker immune from Churches' claims under the Illinois Religious Freedom Restoration Act (IRFRA) after applying only one of *Edelman*'s tests—looking only for express language of waiver, in only one of IRFRA's eight sections, while neglecting to consider the implications of the entire IRFRA text as required by *Edelman*. Consideration by the full Court is therefore necessary to secure and maintain fidelity to Supreme Court precedent and uniformity of this Court's decisions. *See* Fed. R. App. P. 35(b)(1)(A).

(b) Whether an IRFRA claim can be brought against an Illinois state official in federal court also presents an exceptionally important question for consideration by the full Court. *See* Fed. R. App. P. 35(b)(1)(B).

BACKGROUND FACTS

A. Restrictions and Exemptions Under Governor Pritzker's Orders.

Governor Pritzker has issued a series of executive orders and pronouncements in response to COVID-19 (the "Orders"). (Br., Doc. 24, at 4.) Most relevant to this proceeding is Executive Order 2020-32 ("Order 32"), which is a "stay at home" order requiring "all individuals . . . to stay at home . . . except as allowed in this Executive Order."[1] Order 32 also prohibits "any gathering of more than ten people . . . unless exempted by this Executive Order." (*Id.*) But it also provides 10 pages of specific and detailed exemptions for those who do not have to stay home or limit their gatherings to 10 people, such as those engaging in "Essential Activities," which include "engag[ing] in the free exercise of religion," and patronizing and working at **23 expansive categories** of commercial and non-religious entities such as grocery stores, liquor stores, hardware stores, cannabis stores, gas stations, law firms and professional businesses, news and media operations, financial institutions, labor unions, hotels, laundry businesses, airlines, and funeral services, and also warehouse, supercenter, and 'big box' stores combining several categories. (Br. 4–5.) Essential Activities are subject to Order 32's "Social Distancing Requirements,"

[1] Although Order 32 has been superseded, Churches refer to the order as if still in effect because the panel held that "the dispute is not moot and . . . we must address the merits of [Churches'] challenge to [Order 32]." (Op. at *3.)

which include maintaining six-foot distancing between individuals, frequent handwashing, and regular sanitization of surfaces. (Br. 6.)

B. Unique Requirements for Religious Worship.

Unlike any other Essential Activity, religious worship is singled out and subjected to "the limit on gatherings of more than ten people." (Br. 6.) But Order 32 exempts from numerical limits non-religious services **in the same building,** such as "providing food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals." (Br. 7.)

C. Enforcement Actions Against Churches' Worship.

Churches are two of several Romanian-American Christian churches in the Chicago area, and they initially complied with Governor Pritzker's Orders, foregoing worship on the most treasured Christian holidays of Palm Sunday and Easter Sunday. (Br. 2, 9.) But Churches challenged the Orders, and reopened under strict distancing and other health guidelines applicable to other Essential Activities, as depicted in these photographs:

(Br. 9–12.)

Despite observing the guidelines, however, Churches have received police-issued disorderly conduct citations for worshipping in violation of Order 32, and

threats of criminal sanctions, closure, and even "summary abatement"[2] from Chicago's highest public health official. (Br. 13–14; Reply Br., Doc. 63, at 2.)

ARGUMENT

I. THE PANEL DECISION CONFLICTS WITH SUPREME COURT PRECEDENT AND SPLITS FROM THE SIXTH CIRCUIT ON THE EXCEPTIONALLY IMPORTANT QUESTION OF WHETHER THE GOVERNOR'S COVID-19 EXECUTIVE ORDERS, WHICH IMPOSE UNIQUE RESTRICTIONS ON CHURCHES' RELIGIOUS EXERCISE, MUST SATISFY STRICT SCRUTINY.

A. The Panel Disregarded the Supreme Court's *Lukumi* Decision Requiring Strict Scrutiny.

While the Panel Opinion cited *Lukumi* in passing (Op. at *4), it failed to acknowledge or apply *Lukumi*'s binding tests for determining whether a law burdening religious exercise is subject to strict scrutiny. Under *Lukumi*, "[a] law burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny"—it "must advance interests of the highest order and must be narrowly tailored in pursuit of those interests"—and it "will survive strict scrutiny only in rare cases." 508 U.S. at 546 (cleaned up). Churches have demonstrated their sincerely held religious beliefs that Christians are not to forsake assembling together, especially in times of peril and crisis. (Br. 26.) The

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[2] "Summary abatement would mean **to put down or destroy without process**. This means the inspector can, upon his own judgment, cause the alleged nuisance to stop on his own authority and effect a destruction of property at his discretion." *City of Kankakee v. New York Cent. R. Co.*, 55 N.E.2d 87, 90 (1944) (emphasis added).

threatened and actual enforcements of the Orders clearly and substantially burden Churches' religious practice of assembling for worship, thus triggering *Lukumi*'s tests that the Panel disregarded.

"Neutrality and general applicability are interrelated, and . . . failure to satisfy one requirement is a likely indication that the other has not been satisfied." *Lukumi*, 508 U.S. at 531. A law "fall[s] well below the minimum standard necessary to protect First Amendment rights" when the government "**fail[s] to prohibit nonreligious conduct that endangers these interests in a similar or greater degree**" than the prohibited religious conduct. *Id.* at 543 (emphasis added).

Governor Pritzker's Orders fail both neutrality and general applicability because they treat religious worship differently from all other "Essential Activities," even in the same building, and because they exempt from numerical limitations non-religious conduct that creates the same or greater risk of spreading COVID-19 (or not) as religious worship. The Orders facially impose a 10-person limit on "Essential" religious worship but exempt a multitude of "Essential" commercial and nonreligious activities necessarily and unavoidably involving crowds (*e.g.*, shopping or working at liquor, warehouse, and supercenter stores). Indeed, even non-religious social services provided in a church building are exempt from limits, while religious worship services in the same building are limited. And all "Essential Activities," except worship services, are permitted without numerical limit if distancing and

hygiene guidelines are followed. But religious services of more than 10 people are prohibited—even if distancing and hygiene guidelines are followed religiously. "At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or **regulates or prohibits conduct because it is undertaken for religious reasons**." *Lukumi*, 508 U.S. at 532 (emphasis added). Prohibiting Illinoisans from assembling at a church for religious reasons, such as a worship service, while permitting them to assemble at the same church for non-religious reasons, such as giving or receiving non-religious social services, "violat[es] the Free Exercise Clause beyond all question." *On Fire Christian Ctr., Inc. v. Fisher*, No. 3:20-CV-264-JRW, 2020 WL 1820249, at *6 (W.D. Ky. Apr. 11, 2020).

B. The Panel's Value Judgments on the Importance of Worship Violate the Strict Scrutiny Principles of *Lukumi*.

The Panel acknowledged that some "Essential Activities" providing *non-religious*, *material* needs, but involving COVID-19 risks similar to religious worship, are exempted from the Orders' numerical limitations—even if performed in the same church building—but found the disparate treatment nondiscriminatory because the Panel assigned a lower value to *religious*, *spiritual* needs met by in-person worship. (Op. at *5 ("[S]ome workplaces present both risks."), *6 ("[W]e do not deny that warehouse workers and people who assist the poor or elderly may be at much the same risk . . . ."), *5 ("Feeding the body requires teams of people to

work together in physical spaces, but churches can feed the spirit in other ways.").[3]) But such line drawing based on the Panel's assignment of value to religious activity, rather than assessment of its comparative risk to the claimed governmental interest, is precisely what *Lukumi* and the Free Exercise Clause forbid.[4] A law "fall[s] well below the minimum standard necessary to protect First Amendment rights" when the government "fail[s] to prohibit nonreligious conduct that endangers these interests in a similar or greater degree" than the prohibited religious conduct. *Lukumi*, 508 U.S. at 543.

"[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Rev. Bd. of Ind. Emp. Security Div.*, 450 U.S. 707, 714 (1981). "Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be

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[3] *Cf. Matthew* 4:3–4 (ESV) ("It is written, Man shall not live by bread alone, but by every word that comes from the mouth of God." (internal quotation marks omitted)); *Maryville Baptist*, 957 F.3d at 614 ("But the orders do not permit soul-sustaining group services of faith organizations, even if the groups adhere to all the public health guidelines required of essential services . . . .").

[4] *See* Josh Blackman, *Judge Easterbrook admits what was implicit in Chief Justice Roberts' South Bay Decision*, The Volokh Conspiracy (June 17, 2020, 5:22 PM), https://reason.com/2020/06/17/judge-easterbrook-admits-what-was-implicit-in-chief-justice-roberts-south-bay-decision/ ("Governors are making 'value judgments' about the importance of religious worship. They have deemed it unimportant.").

made suspect before the law." *United States v. Ballard*, 322 U.S. 78, 86–87 (1944). "Man's relation to his God was made no concern of the state [by the Constitution]. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views." *Id.* at 87. The value of religious worship is enshrined in the First Amendment, and even in Order 32's "Essential" designation. Thus, the Constitution prohibited the Panel from second-guessing the value of worship to Churches, and *Lukumi* required the Panel to invalidate Order 32's disparate treatment of religious worship as compared to other "Essential" activities of similar risk.

C. The Panel Decision Conflicts With Sixth Circuit Decisions Which Correctly Apply *Lukumi* to COVID-19 Executive Orders and Reject the Century-Old *Jacobson* as a Pandemic Exception to Free Exercise Principles.

The Panel Opinion passed over two authoritative decisions of the Sixth Circuit Court of Appeals holding that restrictions on drive-in and in-person worship services violated the First Amendment under *Lukumi*'s risk-centered test. (Op. at *5.) *See Roberts v. Neace*, 958 F.3d 409 (6th Cir. 2020); *Maryville Baptist Church, Inc. v. Beshear*, 957 F.3d 610 (6th Cir. 2020). In *Roberts*, which "incorporate[s] some of the reasoning (and language) from" the earlier *Maryville Baptist* decision, 958 F.3d at 412, the Sixth Circuit enjoined enforcement of Kentucky executive orders that prohibited in-person worship services but provided "serial exemptions for secular activities [that] pose comparable public health risks." 958 F.3d at 414, 416. The

"exception-ridden policy," explained the court, represented "**the antithesis of a neutral and generally applicable policy and just the kind of state action that must run the gauntlet of strict scrutiny**." *Id.* at 413–14 (cleaned up) (emphasis added). Rejecting the kind of value-based line drawing employed by this Court's Panel, the *Roberts* court applied the risk-centered approach mandated by *Lukumi*: "Assuming all of the same precautions are taken, why can someone safely walk down a grocery store aisle but not a pew? And why can someone safely interact with a brave deliverywoman but not with a stoic minister?" *Id.* at 414. "[W]hy do the orders permit people who practice social distancing and good hygiene in one place but not another for similar lengths of time?" *Id.* "The Commonwealth has no good answers." *Id.*

The *Roberts* court also rejected the notion—apparently accepted by this Court's Panel—that the Kentucky orders were justified because congregants could simply worship online, reasoning,

> Who is to say that every member of the congregation has access to the necessary technology to make that work? Or to say that every member of the congregation must see it as an adequate substitute for . . . what it means when "not forsaking the assembling of ourselves together," Hebrews 10:25.
>
> [T]hat's exactly what the federal courts are not to judge—how individuals comply with their own faith as they see it.

Id. at 415–16 (citation omitted).

Apart from its value-based analysis (*see supra* Part I.B), the Panel's answer to the authoritatively reasoned Sixth Circuit decisions was, "We line up with Chief Justice Roberts," referring to the Chief Justice's "observations" in his solo concurrence in the Supreme Court's 5-4 denial of an extraordinary writ of injunction against a California executive order imposing a 25% occupancy limit on houses of worship. (Op. at *5.) *See South Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613 (2020) [hereinafter *South Bay*]. The concurrence focused primarily on the extremely rare circumstances justifying emergency, interlocutory injunctive relief from the Supreme Court— "where 'the legal rights at issue are indisputably clear' and, even then, 'sparingly and only in the most critical and exigent circumstances.'" *Id.* at 1613 (Roberts, C.J., concurring). The Chief Justice's additional "observations," however, were based on pre-pandemic, business-as-usual assumptions about worship—"where large groups of people gather in close proximity for extended periods of time," *id.*, not the realities of Churches' responsibly distanced and sanitized worship under the guidelines available to every other Essential Activity under Governor Pritzker's Orders.

And the Panel disregarded Justice Kavanaugh's *South Bay* dissent, joined by Justices Thomas and Gorsuch, providing a more authoritative analysis: "The basic constitutional problem is that comparable secular businesses are not subject to a 25% occupancy cap, including factories, offices, supermarkets, restaurants, retail stores,

pharmacies, shopping malls, pet grooming shops, bookstores, florists, hair salons, and cannabis dispensaries." *Id.* 1614 (Kavanaugh, J., dissenting). Applying strict scrutiny, and relying heavily on the Sixth Circuit's *Roberts* decision, Justice Kavanaugh recognized that "'restrictions inexplicably applied to one group and exempted from another do little to further [the government's interest] and do much to burden religious freedom.'" *Id.* at 1614–15. He concluded that "California's 25% occupancy cap on religious worship services indisputably discriminates against religion, and such discrimination violates the First Amendment." *Id.*

Finally, the Panel appeared to rely on *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), as providing a catchall, "public-health emergenc[y]" standard shielding executive orders from strict scrutiny during a pandemic. (Op. at *5–6.) But *Jacobson* did not involve the First Amendment questions at issue here (or any at all), and the Supreme Court's substantial development of its First Amendment jurisprudence in the century since *Jacobson* precludes such reliance. Indeed, "compelling interest" was not introduced to First Amendment jurisprudence until over 50 years after *Jacobson*, in *Sweezy v. New Hampshire*, 354 U.S. 234, 65 (1957) (Frankfurter, J., concurring), and strict scrutiny was not applied in its current form until 60 years after *Jacobson*, in *Sherbert v. Verner*, 374 U.S. 398 (1963). Neither Chief Justice Roberts nor Justice Kavanaugh, in their respective *South Bay* opinions, cited *Jacobson* as providing an alternative First Amendment analysis.

Moreover, *Jacobson* itself dealt with a facially neutral law of general applicability (though before the category was so-called in *Employment Division v. Smith*, 494 U.S. 872 (1990)), and thus provides an unsuitable framework to address the disparate treatment of religious exercise under Order 32. *See First Baptist Church. v. Kelly*, No. 20-1102-JWB, 2020 WL 1910021, at *6 (D. Kan. Apr. 18, 2020) ("*Smith* . . . *Jacobson*, and similar cases do not provide the best framework in which to evaluate the Governor's executive orders . . . ."). Furthermore, the Sixth Circuit rightly rejected application of *Jacobson* as supplying a separate, deferential framework for evaluation of free exercise claims against continuing executive restrictions: "While the law may take periodic naps during a pandemic, we will not let it sleep through one." *Roberts*, 958 F.3d at 414–15; *Maryville Baptist*, 957 F.3d at 615; *cf. Berean Baptist Church v. Cooper*, No. 4:20-cv-81-D, 2020 WL 2514313, at *1 (E.D.N.C. May 16, 2020) ("There is no pandemic exception to the Constitution . . . or the Free Exercise Clause . . . .")

II. THE PANEL DECISION CONFLICTS WITH SUPREME COURT PRECEDENT ON WHETHER CHURCHES' IRFRA CLAIMS MAY BE BROUGHT IN FEDERAL COURT.

The Panel also disregarded a critical aspect of the Supreme Court's Eleventh Amendment precedent in addressing whether Churches' claims for declaratory and injunctive relief under the Illinois Religious Freedom Restoration Act, 775 ILCS 35/1–99 [hereinafter IRFRA], may be brought against the Governor in federal

court. (Op. at *4.) The Panel rightly cited *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 99 (1984), for the general rule of state sovereign immunity, that "a federal court cannot issue relief against a state under state law," and *College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board*, 527 U.S. 666, 676 (1999) (and "other cases" cited therein), for the exception—that a state can waive its sovereign immunity in federal court by a "'clear declaration.'" (Op. at *4.) But the Panel shortchanged the exception, both by not applying its full scope and by considering only part of IRFRA's text.

In *Edelman v. Jordan* the Supreme Court defined the sovereign immunity waiver test:

> In deciding whether a State has waived its constitutional protection under the Eleventh Amendment, we will find waiver only where stated 'by the most express language **or by such overwhelming implications from the text as (will) leave no room for any other reasonable construction**.'

415 U.S. 651, 673 (1974) (emphasis added). The Court merely summarized the test in *Pennhurst*, 465 U.S. at 99 (citing *Edelman*), and in *College Savings Bank*, 527 U.S. at 676 (citing *Pennhurst*). Here, the Panel only applied a summarized test, looking only for "express language," and looking only in one of IRFRA's eight sections (Op. at *4), and failing to consider the "overwhelming implications" from all of IRFRA's text that "leave no room for any other reasonable construction," as required by *Edelman*.

IRFRA's full text reveals Illinois intended IRFRA to be available to federal plaintiffs against Illinois officials. IRFRA's "Findings and purposes" section contains three express findings relevant to this intent:

> (4) In Employment Division v. Smith . . . the Supreme Court virtually eliminated the requirement under the First Amendment . . . that government justify burdens on the exercise of religion imposed by laws neutral toward religion.
>
> (5) In City of Boerne v. P. F. Flores . . . the Supreme Court held that [federal RFRA] infringed on the legislative powers reserved to the states under the Constitution . . . .
>
> (6) The compelling interest test, as set forth in Wisconsin v. Yoder . . . and Sherbert v. Verner . . . is a workable test for striking sensible balances between religious liberty and competing governmental interests.

IRFRA § 35/10(a)(4)–(6). Following these findings, IRFRA states its express purposes:

> **To restore** the compelling interest test as set forth in [*Yoder*] and [*Sherbert*], and **to guarantee that a test of compelling governmental interest will be imposed on all State** . . . laws, ordinances, policies, procedures, practices, and **governmental actions in all cases in which the free exercise of religion is substantially burdened**.
>
> [and]
>
> **To provide a claim** . . . to persons whose exercise of religion is substantially burdened by government.

IRFRA § 35/10(b) (emphasis added).

The express findings supply the critical context for IRFRA's express purposes: "To **restore**" strict scrutiny and "to **guarantee**" it is "imposed on **all** State . . . governmental actions **in all cases** . . . ." *Id.* (emphasis added). And so do the pre-*Smith* and pre-*Flores* federal cases against state officials. *See, e.g.*, *Madyun v. Franzen*, 704 F.2d 954, 959 (7th Cir. 1983); *Lindstrom v. State of Ill.*, 632 F. Supp. 1535, 1538 (N.D. Ill. 1986); *C.L.U.B. v. City of Chicago*, No. 94 C 6151, 1996 WL 89241, at *19–20 (N.D. Ill. Feb. 27, 1996).

Federal RFRA, by its plain language, restored what *Smith* had taken away—strict scrutiny in most free exercise cases, including against state officials. *See C.L.U.B.*, 1996 WL 89241, at *20. IRFRA's purpose, by its plain language, is to restore what *Flores*, in turn, had taken away—federal RFRA's restoration of strict scrutiny, including against state officials. Illinoisans brought free exercise claims against Illinois officials in federal court prior to *Smith*, and then under federal RFRA prior to *Flores*. *See Madyun*, *Lindstrom*, *C.L.U.B.*, *supra*. IRFRA can neither restore nor guarantee the protections taken away by *Smith*, and then *Flores*—in all cases—if it only applies in Illinois state courts. Thus, both the "express language [and] overwhelming implications from the text . . . leave no room for any other reasonable construction.'" *Edelman*, 415 U.S. at 673. Accordingly, Illinois has consented to federal jurisdiction over Churches' IRFRA claims against Governor Pritzker, and the full Court should grant rehearing on this exceptionally important question.

CONCLUSION

For all the foregoing reasons, rehearing by the full Court is necessary to secure and maintain uniformity of the Court's decisions and fidelity to binding precedent.

Respectfully submitted:

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/s/ Roger K. Gannam
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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.

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s/ Roger K. Gannam
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