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LEGAL ALERT

Federal District Court Finds Governor Pritzker's April 30th Stay-At-Home Order Does Not Violate Constitutional Or Statutory Provisions

The United States District Court for the Northern District of Illinois issued a ruling on May 3, 2020 in *Cassell and the Beloved Church v. Jay Robert Pritzker, Governor of Illinois, et al.*, Case No. 20 C 50153 (N.D.Ill. 2020), finding that Governor Pritzker's April 30, 2020 stay-at-home order (the "Order") does not violation the right to free exercise of religion found in the United States Constitution and in Illinois law. In doing so, the District Court denied the plaintiffs' motion for a temporary restraining order and a preliminary injunction preventing enforcement of the Order which allows worshippers to engage in the free exercise of religion as long as they comply with Illinois' social distancing requirements and refrain from gatherings of more than ten people.

The Plaintiffs' Claims And The Requirements For A Temporary Restraining Order And A Preliminary Injunction

The plaintiffs filed their lawsuit on April 30, 2020 hoping to resume worship without any limitations. Plaintiffs alleged that the Order violates the First Amendment's Free Exercise Clause; Illinois's Religious Freedom Restoration Act ("RFRA"), 775 ILCS 35/15; the Emergency Management Agency Act ("EMAA"), 20 ILCS 3305/7; and the Illinois Department of Health Act ("DHA"), 20 ILCS 2305/2(a).

The District Court evaluated the plaintiffs' requests for a temporary restraining order and a preliminary injunction under standards requiring the moving party to show that (1) its case has "some likelihood of success on the merits," (2) it has "no adequate remedy at law," and (3) without relief it will suffer irreparable harm. *Planned Parenthood of Ind. & Ky., Inc. v. Comm'r of Ind. State Dep't of Health*, 896 F.3d 809, 816 (7th Cir. 2018). If the moving party succeeds on these requirements, the court then balances the harms likely to occur to the parties to determine if the

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injunction should be granted or denied. *Ezell v. City of Chicago*, 651 F.3d 684, 694 (7th Cir. 2011). The District Court denied the plaintiffs' motion for a temporary restraining order and a preliminary injunction after determining that none of their claims had any likelihood of success on the merits. The plaintiffs already have filed an appeal of the District Court's ruling with the Seventh Circuit Court of Appeals.

The District Court Ruled The Order Does Not Violate The First Amendment's Free Exercise Clause

With regard to the plaintiffs' First Amendment Free Exercise Clause claim, the District Court noted the United States Supreme Court recognizes that communities have the right to protect themselves from disease epidemics which threaten public health and safety. During an epidemic like COVID-19, courts will overturn rules like the Order only if they lack a "real or substantial relation to [public health]' or that amount to "plain, palpable invasion[s] of rights." *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 27 (1905). The government's enhanced authority to enact measures to protect public health and safety ends when the epidemic ceases. The District Court concluded COVID-19 qualifies as the kind of public health crisis recognized by the United States Supreme Court. The Order requiring religious activities to comply with social distancing clearly promotes the government's interest in protecting citizens from the pandemic. Therefore, the District Court found the plaintiffs had little chance of success with their First Amendment Free Exercise Clause claim.

The District Court also determined the Order was a neutral rule generally applied to secular and religious conduct alike. Therefore, the social distancing requirements are constitutional as long as a rational basis exists to support them. The Order promotes the important goal of slowing the spread of COVID-19 in Illinois. As a result, the order demonstrates a rational basis so that it withstands Free Exercise Clause scrutiny and, for this reason, the plaintiffs' First Amendment claim cannot succeed.

The District Court Ruled the April 30 Order Does Not Violate Illinois Statutes

The plaintiffs maintained the Order violates the Illinois RFRA statute which provides the "government may not substantially burden a person's exercise of religion . . . unless it demonstrates that application of the burden to the person (i) is in furtherance of a compelling governmental interest and (ii) is the least restrictive means of furthering that compelling government interest." 775 ILCS 35/15. The District Court found that stopping the spread of COVID-19 in Illinois is a compelling governmental interest. With regard to whether the ten-person limit on gatherings is the least restrictive means of pursuing the goal of fighting COVID-19, the District Court determined that no equally effective but less restrictive alternatives are available. Therefore, the plaintiffs' RFRA claim is unlikely to succeed.

The District Court considered the plaintiffs' contention that Governor Pritzker exceeded his authority under the EMAA when he issued the Order. The question, according to the District Court, is "whether the Act permits Governor Pritzker to declare more than one emergency related to the spread of COVID-19." The plaintiffs contended the epidemic justifies only one 30-day disaster proclamation which grants the Governor emergency powers to issue the Order. The defendants asserted that as long as the Governor makes new findings of fact that the COVID-19 emergency still exists, then the EMAA allows him to declare successive disasters even though they arise from the same crisis. The District Court sided with the Governor. It noted that some disasters, e.g., storms or earthquakes, run their course over a few days or weeks, while other disasters may last for months or even years. The latter type disasters pose a threat that persists beyond a single 30-day period. The District Court reasoned that, "[i]t

is difficult to see why the legislature would recognize these long-running problems as disasters, yet divest the Governor of the tools he needs to address them." Based on this reasoning, the District Court concluded that the plaintiffs' EMAA claim had less than a negligible chance of success.

Finally, the District Court ruled that the plaintiffs' DHA claim could not succeed. According to the plaintiffs, only the Illinois Department of Health can quarantine and isolate Illinoisans; consequently, Governor Pritzker's stay-at-home orders lack authority. The problem with the plaintiffs' claim rests with the definition of a "quarantine." The District Court pointed to a dictionary definition of "quarantine" which means a "state of enforced isolation." The Order allows the plaintiffs to worship and pray in small groups not exceeding ten persons; it does not impose a "quarantine" as the term appears in the DHA. Therefore, the District Court held the plaintiffs' DHA claim had almost no chance of success.

Conclusion

The District Court's decision denying the plaintiffs' motion for a temporary restraining order and a preliminary injunction is significant for several reasons. First, the decision indicates the social distancing restrictions in the Order do not violate the First Amendment. Second, the District Court found no less restrictive means for the exercise of religion than those in the Order. Third, the District Court recognized COVID-19 as an extraordinary crisis which allows the Governor to exercise enhanced powers under Illinois law to protect public health and safety by issuing successive emergency proclamations provided he can show the disaster continues. Once the COVID-19 crisis abates, the Governor's emergency powers will cease.

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