IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

MARK ANTHONY SPELL; LIFE TABERNACLE CHURCH, Plaintiffs, v. JOHN BEL EDWARDS, in his individual capacity and his official capacity as Governor of the State of Louisiana; DAVID BARROW, in his individual capacity and his official capacity as Mayor of Central City, Louisiana; ROGER CORCORAN, in his individual capacity and official capacity as Chief of Police of Central City, Louisiana; SHARON WESTON BROOME, in her individual capacity and official capacity as Mayor of Baton Rouge, Louisiana; SID GAUTREAUX, individually and in his official capacity as Sheriff of East Baton Rouge Parish, Louisiana; FRED CRIFASI, individually and in his official capacity as Judge of the 19th Judicial District Court, Defendants.	)	Case No. _____

PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION WITH INCORPORATED MEMORANDUM OF LAW

Plaintiffs, Pastor MARK ANTHONY SPELL (Pastor Spell) and LIFE TABERNACLE CHURCH, (the Church) pursuant to Fed. R. Civ. P. 65 and Local Rule 65, move this Honorable

Court for a Temporary Restraining Order (TRO) and Preliminary Injunction against the Defendants JOHN BEL EDWARDS, in his individual capacity and in his capacity as Governor of the State of Louisiana, DAVID BARROW, in his individual capacity and in his capacity as Mayor of the City of Central, Louisiana, ROGER CORCORAN, in his individual capacity and in his capacity as the Chief of Police of the City of Central, Louisiana; SHARON WESTON BROOM, in her individual capacity and in her capacity as the Mayor-President of the City of Baton Rouge, Parish of East Baton Rouge; SID GAUTREAUX, individually and in his capacity as Sheriff of the Parish of East Baton Rouge; and FRED T. CRIFASI, individually and in his capacity as Judge, Div. H, Section 1 of the 19th Judicial District Court in and for the Parish of East Baton Rouge, as set forth in Plaintiff's contemporaneously filed Verified Complaint.

URGENCIES JUSTIFYING TEMPORARY RESTRAINING ORDER

Pastor Spell is presently under "house arrest," wearing an ankle bracelet and forbidden to leave his home upon penalty of contempt of court, fines and further imprisonment, for the "crime" of preaching to his assembled congregation. This alone, in the United States of America, creates an urgency worthy of this Court's temporarily restraining the Defendants in this case from the further unconstitutional and unlawful breach of Plaintiffs' constitutionally protected rights of freedom of religion, freedom of assembly, freedom of speech and protection from government entanglement in his religious practices by violation of the Establishment clause, all rights protected by the First Amendment to the United States Constitution. These rights do not arise from the "penumbra" of rights protected under the shadow of the Constitution; they are among the first and foremost of enunciated rights protected by the Constitution. Each day that Pastor Spell is wrongfully imprisoned in his home is a travesty and humiliation upon his dignity as an individual human being in the image of God, and

a violation of his Constitutionally and statutorily protected rights as a citizen of the State of Louisiana and the United States of America.

In Plaintiffs Prayer for Relief in the Verified Complaint, Plaintiffs seek a temporary restraining order restraining and enjoining the Defendants from unconstitutionally enforcing and applying the Governor's Emergency Orders prohibiting Pastor Spell and Life Tabernacle from assembling to worship, and, as applied by Defendants, allowing Pastor Spell to preach to his congregation ***whatsoever.*** There has been no factual determination made that Pastor Spell has actually violated the ambiguous and contradictorily-worded Emergency Orders, but Defendants are enforcing by penalties and home incarceration the Emergency Orders against him as if alleged violations were proven fact by the "end run" of a misplaced "special condition of bond," currently imposed by a Louisiana State District Court judge. Furthermore Defendants have explicitly failed and refused to even allow argument regarding the discriminatory and disparately applied orders against Pastor Spell and Life Tabernacle Church while allowing local and similarly situated non-religious businesses-"big box" retailers, groceries and hardware stores to continue business accommodating gatherings, crowds of more than ten (10) people or of any limit whatsoever, without the enforcement of any "social distancing," or other measures supposedly required by the Emergency Orders. As shown in the Verified Complaint, the Emergency Orders have been interpreted, applied and enforced against the Plaintiffs Pastor Spell and Life Tabernacle for congregating in church for the purpose of worship, without consideration of any "social distancing" measures undertaken by Pastor Spell and the church, which are considerably more than those other entities.

Other courts have found the threat of criminal sanction enough to warrant a TRO. See, *On Fire Christian Center Inc. v. Fischer*, No. 3:20-cv-264-JRW, (W.D. KY. April 11, 2020) In

that case the court enjoined the Mayor of Louisville, Kentucky from "enforcing, attempting to enforce, threatening to enforce, or otherwise requiring compliance with any prohibition on drive-in church services at On Fire." Id at p. 1.

In Kansas, the Governor also imposed a restriction on religious gatherings by prohibiting "gatherings" of more than 10 persons, similar to the Emergency Orders of Governor John Bel Edwards. The U.S. District Court for the District of Kansas issued a TRO enjoining Kansas officials from enforcing its prohibition on religious gatherings and required the government to treat worship services the same as other similar gatherings that are permitted. *First Baptist Church v. Kelly*, No. 20-1102-JWB, p. 6, 7, (D. Kan. April 18, 2020)

In Louisiana, what officials in Kansas only threatened has actually been done. Pastor Mark Anthony Spell has been arrested and issued criminal summonses, and, due to an imposed "special condition of bond" in a tangentially related matter**, has been placed under house arrest and forbidden to preach or assemble his congregation, on pain of contempt of court.** Without emergency relief from this Court, Pastor Spell has suffered and will continue to suffer irreparable harm from his continued imprisonment and threat of further imprisonment and sanction for the act of engaging in the free exercise of his religious rights, freedom of assembly, speech and other rights protected by the Constitution. Pastor Spell seeks to be free from the unconstitutional application of the Governor's Emergency Orders for the act of assembling his congregation and preaching the Word of God.

MEMORANDUM OF LAW IN SUPPORT

To obtain a TRO or PI, Pastor Spell and Life Tabernacle must demonstrate it has a strong likelihood of success on the merits, that it will suffer irreparable injury absent the order, that

the balance of the equities favors the order, and that the public interest is served by the Court's issuing the order. *See MicroStrategy, Inc. v. Motorola, Inc.*, 245 F.3d 335, 339 (4th Cir. 2001); *Moore v. Kempthorne*, 464 F. Supp. 2d 519, 525 (E.D. Va. 2006) ("The standard for granting either a TRO or preliminary injunction is the same."). Plaintiffs easily satisfy each of these elements factually and legally. (Plaintiffs hereby incorporate by reference the allegations of its Verified Complaint, and supporting affidavits filed contemporaneously herewith, as its statement of facts in support of this motion.)

A. Federal Constitutional Law, Jurisdiction and the Free Exercise Clause

The First Amendment's Free Exercise Clause, incorporated and made applicable to state and local governments by the Fourteenth Amendment to the United States Constitution, prohibits Defendants from abridging the free exercise of religion.

James Madison, the principal architect of the Free Exercise Clause, defined "religion" as "'the duty which we owe to our Creator and the manner of discharging it.'" James Madison, *Memorial and Remonstrance* (June 20, 1785) (quoting Article XVI, Virginia Declaration of Rights (1776)). The Supreme Court of the United States has held that Madison's argument was that "religion," under that definition, "was not within the cognizance of civil government." *Reynolds v. United States*, 98 U.S. 145, 163 (1879).

James Madison said in his *Memorial and Remonstrance*:

> Because we hold it for a fundamental and undeniable truth, "that Religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence." The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable, because the opinions of men, depending only on the evidence contemplated by their own minds cannot follow the dictates of other men: It is unalienable also, because what is here a right towards men, is a duty towards the Creator. It is the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to him. This duty is precedent,

> both in order of time and in degree of obligation, to the claims of Civil Society. Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governour of the Universe: And if a member of Civil Society, who enters into any subordinate Association, must always do it with a reservation of his duty to the General Authority; much more must every man who becomes a member of any particular Civil Society, do it with a saving of his allegiance to the Universal Sovereign. We maintain therefore that in matters of Religion, no man[']s right is abridged by the institution of Civil Society and that Religion is wholly exempt from its cognizance.

James Madison, *Memorial and Remonstrance* (June 20, 1785).

The United States Supreme Court attached Madison's *Memorial and Remonstrance* to its opinion in *Everson v. Bd. of Educ. of the Twp. of Ewing*, 330 U.S. 1 (1947). Madison viewed religious liberty as a *jurisdictional* matter. Neither civil society nor the government could make a person revoke his duty to "the Universal Sovereign," which is why, in Madison's view, "in matters of Religion, no man[']s right is abridged by the institution of Civil Society" and "Religion is wholly exempt from its cognizance."

In *Reynolds*, the Supreme Court analyzed Thomas Jefferson's bill for establishing religious freedom as follows:

> [A]fter a recital "that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy which at once destroys all religious liberty," it is declared "that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order." *In these two sentences is found the true distinction between what properly belongs to the church and what to the State.*

Reynolds, 98 U.S. at 163 (emphasis added).

Thomas Jefferson wrote to the Danbury Baptist Association that the First Amendment builds "a wall of separation between church and State." *Reynolds*, 98 U.S. at 164. Although the courts have deviated from Jefferson's original understanding of this

phrase, Jefferson recognized that there was a *jurisdictional* separation between the institution of the church and the institution of the State. This concept, although mangled by later Supreme Court decisions, is still in our First Amendment jurisprudence.

Because "religion" is "the duty which we owe to our Creator and the manner of discharging it," and because Plaintiffs believe that they have a duty to assemble the church in person as opposed to another means, the Defendants violated Plaintiffs' religious liberty by forbidding them from doing so.

Plaintiffs' principles have not caused a "break out into overt acts against peace and good order." *Reynolds*, 98 U.S. at 163. Consequently, the decision of whether to assemble his church or not belongs to the church, not to the state.

Supreme Court jurisprudence, although deviating from the Constitution's original intent, has continued to recognize that there are matters that belong exclusively to the church and not to the state, even if a valid neutral law of general applicability stands to the contrary. *See, e.g.*, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S.Ct. 1719, 1727 (2018) (stating that the Free Exercise Clause would protect a member of the clergy with religious objections to same-sex marriage from having to officiate a same-sex wedding); *Obergefell v. Hodges*, 135 S.Ct. 2584, 2607 (2015) (stating that the First Amendment protects religious people and organizations who advocate the teaching that same-sex marriage is sinful); *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012) (recognizing that the First Amendment exempts churches from generally applicable employment laws as to the hiring and firing of ministers).

Employment Division v. Smith, 494 U.S. 872 (1990) held that "the right to free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral

law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).'" 494 U.S. at 879 (citations omitted). But that same case also held:

> But the "exercise of religion" often involves not only belief and profession but the performance (or abstention from) physical acts: *assembling with others for a worship service*, participating in sacramental use of bread and wine, proselytizing, abstaining from certain foods or certain modes of transportation. It would be true, we think (though no case of ours has involved the point), that a State would be "prohibiting the free exercise [of religion]" if it sought to ban such acts or abstentions only when they are engaged in for religious reasons, or only because of the religious belief that they display.

Id. at 877 (emphasis added; alteration in original).

If Congress can make no "law" prohibiting the free exercise of religion, then surely a Chief Executive (not delegated law-making authority by a law-making body) can make no rule restricting the free exercise of religion, either.

If the "wall of separation between church and State" prevents the State from deciding who churches can choose as their ministers, what they can teach, and which ceremonies they can perform, then surely that wall separates the State from the church on an even more fundamental matter—whether the church may meet at all.

Furthermore, in this case, there is not even a "valid and neutral law of general applicability." Indeed, there is no "law" involved, but only the order of Governor Edwards. This "rule" is not only not "law," but it is also not generally applicable, because it arbitrarily distinguishes between "essential" and "nonessential" businesses. This arbitrary distinction is in itself discriminatory, as the Governor is deciding, contrary to the belief of many Christians, that religious services or gatherings are "non-essential." In contrast to Governor Edwards' orders, fifteen other states have recognized their jurisdictional limits and either declared religious services "essential" or otherwise declined to regulate them in any

manner. The Defendants' words and actions, individually and cumulatively, impose, at a minimum, a substantial burden on the free exercise of Plaintiffs' sincerely-held religious convictions.

Though the Governor of Louisiana has not deigned to designate religious gatherings or church assembly as an "essential" activity, and might not view church attendance as fundamental to the religious beliefs of Life Tabernacle or Pastor Spell, his opinion is irrelevant to the protections afforded to Pastor Spell's sincerely held religious beliefs. The Plaintiffs' "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merits First Amendment protection." *Thomas Rev. Bd. of Ind. Emp. Security Div.*, 450 U.S. 707, 714 (1981). Indeed, "[a]t 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**." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993) (emphasis added). "The principle that government, in pursuit of legitimate interests, cannot in a selective manner impose burdens only on conduct motivated by religious belief is essential to the protection of the rights guaranteed by the Free Exercise Clause." Governor Edwards and the other Defendants' actions in this case have clearly violated the Plaintiffs' God-given and Constitutionally protected rights to the free exercise of their religion.

B. Federal Constitution and the Establishment Clause

The First Amendment provides in part, "Congress shall make no law respecting an establishment of religion. In the case of *Lee v. Weisman,* 505 U.S. 577 (1992), the U.S. Supreme Court held that a Jewish prayer spoken by a rabbi at a middle-school graduation

violated the Establishment Clause. The Court noted that the principal had chosen the rabbi to lead in prayer and stated further at p. 588,

> The State's role did not end with the decision to include a prayer and with the choice of clergyman. Principal Lee provided Rabbi Gutterman with a copy of the "Guidelines for Civi Occasions" and advised him that his prayers should be nonsectarian. Through these means, the principal directed and controlled the content of the prayer. Even if the only sanction for ignoring the instructions were that the rabbi would not be invited back, we think no religious representative who valued his or her continued reputation and effectiveness in the community would incur the State's displeasure in this regard. "It is a cornerstone principle of our Establishment Clause jurisprudence that 'it is no part of the business of government to compose official prayers for any group of the American people to recite as part of a religious program carried on by government,"
> *Engle v. Vitale*, 370 U.S. 421, 425 (1962)' and that is what the school officials attempted to do.

In the case at bar, the Governor's Executive Order effectively prohibits Pastor Spell and Life Tabernacle from conducting worship services that include baptism and the laying on of hands, practices that Pastor Spell and Life Tabernacle believe constitute an essential part of their worship service. Just as Principal Lee told Rabbi Gutterman what his prayer could and could not include, so the Governor's Order has effectively told Pastor Spell what their worship service can and cannot include. Similarly, Judge Crifasi went far beyond the Governor's Order and told Pastor Spell he could not preach or conduct worship services at all. This is precisely the kind of entanglement of church and state that the Establishment Clause was intended to preclude.

Recent Supreme Court cases addressing the Establishment Clause have required the Courts to examine whether a practice was accepted by the Founding generation. *See, e.g., Town of Greece v. Galloway*, 134 S.Ct. 1811, 1819 (2014) ("Any test the Court adopts must acknowledge a practice that was accepted by the Framers and has withstood the critical scrutiny of time and political change."); *American Legion v. American Humanist Association*, 139 S.Ct. 2067, 2087 (2019) ("in later cases, we have taken a more modest approach that focuses on the

particular issue at hand and looks to history for guidance."). One of the primary objectives of the Establishment Clause was to forbid the government from telling churches how to worship, how to preach, how to assemble, or how to do other essential church functions. But that is exactly what the Defendants have done here. The Defendants have therefore violated the Establishment Clause of the First Amendment to the United States Constitution.

C. Federal Constitution and Freedom of Assembly

The First Amendment's Freedom of Assembly Clause, incorporated and made applicable to state and local governmental action by the Fourteenth Amendment to the United States Constitution, states that the government may not abridge "the right of the people to peaceably assemble, and to petition the government for a redress of grievances."

The grammar of this Clause indicates that the right to peaceably assemble and the right to petition the government for a redress of grievances are two different rights. They are often seen together, especially in cases of peaceful protests of government policies. Nevertheless, the Constitution does not recognize the right of the people "to peaceably assemble and petition the government for a redress of grievances." Instead, it recognizes "the right of the people to peaceably assemble, ***and*** to petition the government for a redress of grievances." (Emphasis added.) They are two separate rights.

The Defendants' actions have forbidden Pastor Spell and Life Tabernacle Church from assembling together for a worship service. Therefore, the Defendants have violated Plaintiffs' freedom of assembly.

D. Federal Constitution and Freedom of Speech

The First Amendment's Free Speech Clause, incorporated and made applicable to state and local governmental action by the Fourteenth Amendment to the United States Constitution,

prohibits burdening the freedom of speech. The Defendants' actions restrict Pastor Spell from speaking to his congregation and the members of his congregation from speaking to him and to each other. At the very least, the Defendants' actions are not permissible time, place, or manner restrictions on Plaintiffs. They are not narrowly tailored to achieve a substantial government interest, nor do they leave open ample alternative forms of communication. Moreover, when the Defendant Judge Crifasi released Pastor Spell on bail, he ordered Pastor Spell to refrain from preaching to his congregation at all, upon pain of contempt of court, which is punishable by fines and imprisonment. This restriction on Pastor Spell's speech was content-based and is not the least restrictive means of achieving a compelling government interest. The Defendants have therefore violated Plaintiffs' freedom of speech.

E. Federal Constitution and Equal Protection of the Law

The Fourteenth Amendment prohibits the states from "deny[ing] to any person within its jurisdiction the equal protection of the laws." The Defendants' actions are unconstitutional abridgements of Plaintiffs' right to equal protection under the law, are not neutral, and specifically target Plaintiffs and other religious groups for unequal treatment. The Defendants' actions abridge Plaintiffs' right to equal protection because they treat Plaintiffs differently from other similarly situated businesses and non-religious entities on the basis of the content and viewpoint of the gatherings that Pastor Spell and Life Tabernacle Church hold. The Defendants have therefore violated Plaintiffs' right to equal protection under the law.

E. State Law Claims-Louisiana Law prohibits the Emergency Orders from violating the U.S. or State Constitution

The Louisiana legislature passed an Act specifically prohibiting an emergency executive order from interfering with the constitutional rights of free exercise of religion, free speech, and freedom of assembly. The State's emergency powers are governed by The Louisiana Homeland Security and Emergency Assistance and Disaster Act, La. R.S. 29:721 et seq. ("the Emergency Act"). In spite of all the powers that the Act gives to the Governor in that statute, it makes clear that "Nothing in this Chapter shall be interpreted to diminish the rights guaranteed to all persons under the Declaration of Rights of the Louisiana Constitution or the Bill of Rights of the United States Constitution." La. R.S. 29:736(D). The Governor's power in emergency matters is further curtailed by the Preservation of Religious Freedom Act, La. Rev. Stat. 13: 5231 *et seq*.

The Louisiana Legislature explicitly rejected in that Act the principles of law enunciated in the U.S. Supreme Court case of *Employment Division v. Smith,* 494 U.S. 872 (1990), in favor of the legal test enunciated in the U.S. Supreme Court case of *Sherbert v. Verner*, 374 U.S. 398 (1963), a more stringent test.

Article I, § 8, of the Louisiana Constitution says, "No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof." Because the language of the Louisiana Constitution mirrors that of the Federal Constitution, it requires at least as much protection for free exercise of religion as the Federal Constitution does.

Moreover, Article I, Section 1 of the Louisiana Constitution states, "The rights enumerated in this Article are inalienable by the state and shall be preserved inviolate by the state." The right to free exercise of religion is one of the rights in the Louisiana Declaration of Rights that the state constitution says must remain "inviolate." Thus, whatever police powers the people of Louisiana gave to their state government, they never gave the state the power to

infringe on religious liberty. The Defendants have therefore violated, and continue to violate, Plaintiffs' right to free exercise of religion under the Louisiana Constitution.

Article I, § 9 of the Louisiana Constitution says, "No law shall impair the right of any person to assemble peaceably or to petition government for a redress of grievances." This is similar to the Freedom of Assembly Clause protected by the First Amendment to the United States Constitution, but with one important difference. The First Amendment says, "the right of the people to assemble, and petition the government for a redress of grievances." (Emphasis added.) The First Amendment's language is conjunctive, but the Louisiana Constitution's language is disjunctive. Thus, even if the First Amendment could be construed to be talking about one right instead of two, the Louisiana Constitution is talking about two rights, not one. Under the Louisiana Constitution, therefore, the right to peaceably assemble therefore absolutely is not dependent on petitioning the government for a redress of grievances. Like freedom of religion, Article I Section 1 of the Louisiana Constitution requires the government to keep the right to peaceably assemble "inviolate." The State's police powers therefore do not extent to the abridgment of freedom of assembly. The Defendants' actions have forbidden Plaintiffs from assembling for a worship service, regardless of any voluntary actions taken by the Church or Pastor to attempt to comply with "social distancing" recommendations. Therefore, the Defendants have violated Plaintiffs' freedom of assembly

Article I, § 7, of the Louisiana Constitution says, "No law shall curtail or restrain the freedom of speech or of the press. Every person may speak, write, and publish his sentiments on any subject, but is responsible for abuse of that freedom." Because the first sentence of this Clause is nearly identical to the First Amendment's Free Speech Clause, it protects at least as much speech as the Federal Constitution does. Like freedom of religion, Article I Section 1 of

the Louisiana Constitution requires the government to keep the right to freedom of speech "inviolate." The State's police powers therefore do not extend to the abridgment of freedom of speech.

The Defendants' actions restrict Pastor Spell from speaking to his congregation and the members of his congregation from speaking to him and each other. At the very least, the Defendants' actions are not permissible time, place, or manner restrictions on Plaintiffs. They are not narrowly tailored to achieve a substantial government interest, nor do they leave open ample alternative forms of communication, and in no way are susceptible to interference by state or federal government under the Constitution of Louisiana or the United States Constitution. Moreover, when the Defendants released Pastor Spell on bail, they refused to let him preach to his congregation at all. This restriction on Pastor Spell's speech was content-based and is not the least restrictive means of achieving a compelling government interest. The Defendants have violated Plaintiffs' freedom of speech. Finally, the State's emergency powers are governed by The Louisiana Homeland Security and Emergency Assistance and Disaster Act, La. R.S. 29:721 et seq. ("the Emergency Act") In spite of all the powers that the Act gives to the state, it makes clear that "Nothing in this Chapter shall be interpreted to diminish the rights guaranteed to all persons under the Declaration of Rights of the Louisiana Constitution or the Bill of Rights of the United States Constitution." La. R.S. 29:736(D). If the United States Constitution and the Louisiana Constitution did not make it clear enough already, the Emergency Act itself clarifies that the State's emergency powers cannot diminish the rights recognized in the Federal and State Constitutions. This is a clear recognition that the Governor may not make a rule that alters the law. The Governor's power in emergency matters is further curtailed by the Preservation of Religious Freedom Act, La. Rev. Stat. 13: 5231 *et seq*. By using these emergency powers to

abridge Plaintiffs' constitutional rights, the Defendants are violating the Emergency Act and the Preservation of Religious Freedom Act as well. If the Court is not satisfied that Plaintiffs are entitled to a TRO under the provisions of Federal Constitutional Law, they are entitle to a TRO under the provisions of the Preservation of Religious Freedom Act, which allows parties to injunctive relief, actual damages, attorney fees and costs.

Governments are not empowered to create "First Amendment Free Zones" within their borders, like the State of Louisiana has done here. *See, e.g.*, *Bd. of Airport Comm'rs v. Jews for Jesus, Inc.*, 482 U.S. 569, 574 (1987) (striking local government's attempt to prohibit protected expression within a "First Amendment Free Zone."); *United States v. Stevens*, 559 U.S. 460, 470 (2010) (government in not empowered to create First Amendment free zones with respect to certain categories of speech). "Even minimal infringements upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief." *Jones v. Caruso*, 569 F.3d 258, 277 (6th Cir. 2009). *See also* 11A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice & Procedure* §2948.1 (2d ed. 1995) ("When an alleged constitutional right is involved, most courts hold that **no further showing of irreparable injury is necessary**." (emphasis added)). Thus, demonstrating irreparable injury in this matter is not difficult. Protecting religious freedom was a vital part of our nation's founding, and it remains crucial today.

THE BALANCE OF THE EQUITIES TIPS DECIDEDLY IN PLAINTIFFS' FAVOR.

An injunction in this matter will protect the very rights the Supreme Court has characterized as "lying at the foundation of a free government of free men." *Schneider v. New Jersey*, 308 U.S. 147, 151 (1939). The granting of a TRO and PI enjoining enforcement of the Governor's Emergency Orders on Pastor Spell and Life Tabernacle's worship services will

impose no harm on the State of Louisiana.. Indeed, the State of Louisiana "is in no way harmed by the issuance of an injunction that prevents the state from enforcing unconstitutional restrictions." *Legend Night Club v. Miller*, 637 F.3 291, 302–03 (4th Cir. 2011). *See also Newsom ex rel. Newsom v. Albemarle Cnty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003) (the government "is in no way harmed by issuance of a preliminary injunction which prevents it from enforcing a regulation, which, on this record, is likely to be found unconstitutional"). But for Pastor Spell and Life Tabernacle, as noted above, even minimal infringements upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief. *Legend Night Club*, 637 F.3d at 302. As such, there can be no comparison between the irreparable and unconscionable loss of First Amendment freedoms suffered by Plaintiffs absent injunctive relief and the non-existent interest the State has in enforcing unconstitutional Governor's Emergency Orders. Absent a TRO, Pastor Spell and Life Tabernacle face an impossible choice: skip church services in violation of their sincere religious beliefs, or suffer continued home incarceration, further arrests, fines, punishment for contempt, or some other enforcement action for practicing those sincere religious beliefs. The balance of the equities tips decidedly in Plaintiffs' favor, and the TRO and PI should issue.

I. THE PUBLIC INTEREST WARRANTS A TRO AND PRELIMINARY INJUNCTION.

As the Fourth Circuit has noted, "**[s]urely, upholding constitutional rights serves the public interest**." *Newsom ex rel. Newsom v. Albemarle Cnty. Pub. Schs.*, 354 F.3d 249, 261 (4th Cir. 2003) (emphasis added); *Legend Night Club*, 637 F.3d at 303 ("upholding constitutional rights is in the public interest"). "Injunctions protecting First Amendment freedoms are **always in the public interest**." *ACLU of Ill. v. Alvarez*, 679 F.3d 583, 590 (7th Cir. 2012) (emphasis

added). This protection is *ipso facto* in the interest of the general public because "First Amendment rights are not private rights [but] rights of the general public [for] the benefits of all of us." *Machesky v. Bizzell*, 414 F.2d 283, 288–90 (5th Cir. 1969) (citing *Time, Inc. v. Hill*, 385 U.S. 374 (1967)). There is no evidence that churches are less essential than every other business that is currently allowed to be open, and "the public has a profound interest in men and women of faith worshipping together [in church] in a manner consistent with their conscience.

CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that the Court issue the TRO and PI as set forth in the Prayer for Relief in Plaintiffs' Verified Complaint

/s/ Jeffrey S. Wittenbrink
Jeffrey S. Wittenbrink, LSBA #18511
Attorney for Plaintiffs and
Foundation for Moral Law
400 Convention Street, Ste. 550
Baton Rouge, Louisiana 70802
225-282-0602
jwittenbrink@lawfirmbr.com

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MARK ANTHONY SPELL; LIFE TABERNACLE CHURCH, Plaintiffs, v. JOHN BEL EDWARDS, in his individual capacity and his official capacity as Governor of the State of Louisiana; DAVID BARROW, in his individual capacity and his official capacity as Mayor of Central City, Louisiana; ROGER CORCORAN, in his individual capacity and official capacity as Chief of Police of Central City, Louisiana; SHARON WESTON BROOME, in her individual capacity and official capacity as Mayor of Baton Rouge, Louisiana; SID GAUTREAUX, individually and in his official capacity as Sheriff of East Baton Rouge Parish, Louisiana; FRED CRIFASI, individually and in his official capacity as Judge of the 19th Judicial District Court, Defendants.	)	Case No. _____

PROPOSED ORDER

CONSIDERING the foregoing Verified Complaint, exhibits, Motion for Termporary Restraining Order and Injunctive Relief, IT IS ORDERED:

Defendants herein, Governor John Bel Edwards, Mayor David Barrow, Central Police Chief Roger Corcoran, Mayor Sharon Weston Broome, East Baton Rouge Sheriff Sid Gautreaux, and Honorable Judge Fred T. Crifasi, Judge of the 19th Judicial District Court, BE AND ARE TEMPORARILY RESTRAINED AND PROHIBITED from enforcing the provisions of the "special conditions of bond" imposed by Judge Crifasi upon Pastor Spell, and TEMPORARILY RESTRAINED AND PROHIBITED from enforcing of Governor John Bell Edwards' "Emergency Orders" against Plaintiffs; Pastor Mark Anthony Spell and Life Tabernacle Church, and/or violating Plaintffs' Constitutionally protected rights any further, until further Order of the Court; IT IS FURTHER ORDERED that this matter be set for hearing on _____regarding the issuance of a Preliminary Injunction and further relief.

THUS DONE AND SIGNED this _____day of _____, 2020 at Baton Rouge, Louisiana.

_____
JUDGE, UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA