

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

MARIANO DIAZ-BONILLA, an individual;
REBECCA DIAZ-BONILLA, an individual;
DANIEL DIAZ-BONILLA, an individual;
ANGELA DIAZ-BONILLA, an individual;
MARIA ELENA DIAZ-BONILLA, an infant,
by her father and next friend, **Mariano Diaz-Bonilla**;
TOMAS DIAZ-BONILLA, an infant,
by his father and next friend, **Mariano Diaz-Bonilla**;
GABRIEL DIAZ-BONILLA, an infant,
by his father and next friend, **Mariano Diaz-Bonilla**;
NICOLAS DIAZ-BONILLA, an infant,
by his father and next friend, **Mariano Diaz-Bonilla**;
ANA MARIE DIAZ-BONILLA, an infant,
by her father and next friend, **Mariano Diaz-Bonilla**;
LILIANA DIAZ-BONILLA, an infant,
by her father and next friend, **Mariano Diaz-Bonilla**;
CLARA DIAZ-BONILLA, an infant,
by her father and next friend, **Mariano Diaz-Bonilla**;
CHRISTIAN DIAZ-BONILLA, an infant,
by his father and next friend, **Mariano Diaz-Bonilla**;

Plaintiffs,

v.

RALPH NORTHAM, in his official capacity as the
Governor of Virginia;
MARK HERRING, in his official capacity as the
Attorney General of the Commonwealth of Virginia;
THE COMMONWEALTH OF VIRGINIA,
Defendants.

Case No.: 1:20-cv-00377-AJT-IDD

**FIRST AMENDED VERIFIED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Liberty must at all hazards be supported. We have a right to it, derived from our Maker. But if we had not, our fathers have earned and bought it for us, at the expense of their ease, their estates, their pleasure, and their blood.

– John Adams, 1765

COME NOW the above-named Plaintiffs Mariano Diaz-Bonilla and Rebecca Diaz-Bonilla and their children, by and through their attorneys, for claims against the above-named Defendants Ralph Northam, in his official capacity as Governor of Virginia; Mark Herring, in his official capacity as Attorney General of Virginia; and the Commonwealth of Virginia, allege and show the Court in its amended verified Complaint, filed as a matter of right under FRCP 15(a)(1)(B), as follows (this “Amended Complaint”).

NATURE OF ACTION

1. The Plaintiffs’ desire in this case is simple: to exercise their constitutionally protected rights to practice their religion, pray at their church together as a family, assemble with and pray with other believers at their home, celebrate Mass and take Holy Communion as a family, and consult with their priest at their home, to at least the same extent that they are allowed to take their nuclear family to the donut shop or the liquor store, shop at Walmart, or gather gardening supplies at Lowes or Home Depot. Unfortunately, for the Diaz-Bonilla family and all people of faith in Virginia, exercise of the above mentioned constitutional rights is heavily restricted or prohibited by Governor Northam’s Executive Orders while the second category of actions is deemed essential and exempt from the virus-motivated ban.

2. Defendants have utilized unprecedented powers and imposed unprecedented restrictions in an effort to fight the dangers of COVID-19. Though taken at least in part out of good motivations, these restrictions have now trampled on the constitutional rights of Virginians for two

months and subjected religious exercise, assembly, and speech to third-class status. Many secular business functions and gatherings are allowed as “essential” under the Governor’s Executive Orders, but similarly situated religious activities are heavily restricted and, in some cases, outrightly banned, even subject to criminal penalties. Under these Orders, even “nonessential” businesses are allowed greater freedom to operate than the Diaz-Bonilla family has to exercise their faith. These actions have deprived the Plaintiffs and all other Virginia residents of fundamental rights protected by the U.S. and Virginia Constitutions.

3. This Action presents facial and as-applied challenges to the Governor of Virginia’s Executive Order 53 on March 23, 2020 (Non-essential Business Closure) attached here as Exhibit 1; Executive Order 55, March 30, 2020 (Stay at Home Order), attached here as Exhibit 2; Executive Order 61, dated May 8 (Phase 1 Reopening Order) attached here as Exhibit 3; Executive Order 62, dated May 12, 2020 (Extending Executive Orders 53 and 55 for Northern Virginia), attached here as Exhibit 4; and associated implementing mandatory regulations (Exhibit 5) which violate the constitutional rights of Plaintiffs. These four executive orders and the accompanying mandatory regulations may at times be referred to collectively as the “Orders” in this Amended Complaint.¹

4. The Orders and Defendants’ enforcement thereof violate (I) the Free Exercise Clause of the First Amendment; (II) the Free Speech Clause of the First Amendment; (III) the Freedom of Assembly Clause of the First Amendment; (IV) substantive rights protected by Due Process of Clause of the Fourteenth Amendment; (V) the Equal Protection Clause of the Fourteenth Amendment; (VI) the right to free exercise of religion under the Virginia Constitution

¹ As of the date of this filing, the Executive Orders are available at <https://www.governor.virginia.gov/executive-actions/>.

Article 1, Section 16; (VII) the right to freedom of speech and to freely assemble under Virginia Constitution Article 1, Section 12; and (VIII) Virginia's statutory protection of religious liberty rights in Virginia Code Section 57-2.02.

JURISDICTION AND VENUE

5. This action arises under 42 U.S.C. § 1983 in relation to Defendants' deprivation of Plaintiffs' constitutional rights to freedom of religion, speech, assembly, due process, and equal protection under the First and Fourteenth Amendments to the U.S. Constitution. Accordingly, this Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and 1343. This Court has authority to award the requested declaratory relief under 28 U.S.C. § 2201; the requested injunctive relief and damages under 28 U.S.C. § 1343(a); and attorneys' fees and costs under 42 U.S.C. § 1988.

6. This Court has supplemental jurisdiction over the state claims under 28 U.S.C. § 1367.

7. The Eastern District of Virginia is the appropriate venue for this action pursuant to 28 U.S.C. §§ 1391(b)(2) because it is the District in which substantially all of the events giving rise to the claims occurred.

PARTIES

8. Plaintiffs, Mariano and Rebecca Diaz-Bonilla and their ten children are residents of Fairfax County, Virginia. The family attends St. Catherine of Sienna Catholic Church in Great Falls, Virginia.

9. The Executive Orders have restricted not only the parents, but also the children from exercising their constitutional rights as well. The Diaz-Bonilla children are Daniel (19 years old – currently living at home during the pandemic), Angela (18 years old – currently living at home), Maria Elena (16 years old), Tomas (15 years old), Gabriel (13 years old), Nicolas (12 years

old), Ana Marie (10 years old), Liliana (8 years old), Clara (7 years old), and Christian (6 years old).

10. As sincere and fervent Roman Catholics, it is important to the Plaintiffs to go to the church together as a family and, among other things, make a visit to the Blessed Sacrament for prayer, seek daily Mass, attend Sunday Mass weekly as a family, go to the Sacrament of Reconciliation (Confession) weekly, and be present for other Sacraments, including Baptisms and Weddings. Moreover, at their home, Plaintiffs regularly gather to pray and worship at their home together with their Priest and/or other believers. The Plaintiffs' sincerely held religious beliefs, and the extent to which they are substantially burdened by the Governor's Orders, are described in greater detail below.

11. Defendant Ralph Northam is made a party to this Action in his official capacity as the Governor of Virginia. The Virginia Constitution vests the "chief executive power of the Commonwealth" in the Governor. Va. Const. Art. V., § 1. Governor Northam signed Executive Orders 53, 55, 61, and 62.

12. Defendant Mark Herring is made a party to this Action in his official capacity as the Attorney General of Virginia.

13. Each Defendant acted under color of state law with respect to all acts or omissions herein alleged.

EXECUTIVE ORDERS

14. On or about March 13, 2020, President Donald J. Trump proclaimed a National State of Emergency as a result of the threat of the emergence of a novel coronavirus, COVID-19.²

² As of the date of this filing, the Proclamation of a National Emergency can be found online at: <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

15. On March 12, 2020, Virginia Governor Ralph Northam proclaimed a State of Emergency concerning COVID-19.³

16. On March 23, 2020, Governor Northam issued Executive Order 53 prohibiting “all public and private in person gatherings of 10 or more individuals” and closing schools, dining establishments (other than delivery or take-out), and many operations deemed “not-essential.”

17. Executive Order 53 allowed the following broadly defined “essential retail businesses” to “remain open during their normal business hours”:

- a. Grocery stores, pharmacies, and other retailers that sell food and beverage products or pharmacy products, including dollar stores, and department stores with grocery or pharmacy operations;
- b. Medical, laboratory, and vision supply retailers;
- c. Electronic retailers that sell or service cell phones, computers, tablets, and other communications technology;
- d. Automotive parts, accessories, and tire retailers as well as automotive repair facilities;
- e. Home improvement, hardware, building material, and building supply retailers;
- f. Lawn and garden equipment retailers;
- g. Beer, wine, and liquor stores;
- h. Retail functions of gas stations and convenience stores;
- i. Retail located within healthcare facilities;

³ As of the date of this filing, the Proclamation of a State of Emergency can be found online at: [https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/eo/EO-51-Declaration-of-a-State-of-Emergency-Due-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/eo/EO-51-Declaration-of-a-State-of-Emergency-Due-to-Novel-Coronavirus-(COVID-19).pdf).

- j. Banks and other financial institutions with retail functions;
- k. Pet and feed stores;
- l. Printing and office supply stores; and
- m. Laundromats and dry cleaners.

18. All other “brick and mortar retail business[es]” may also continue to operate, so long as it limited in-person shopping to no more than 10 patrons per establishment. There is no stated prohibition on the number of employees that may be present in addition to up to 10 patrons. Executive Order 53 ¶ 6.

19. The Orders also allow “business operations offering professional rather than retail services” to remain open and encourage, but do not require that those businesses “utilize teleworking as much as possible.” These businesses must comply to “social distancing recommendations, enhanced sanitizing practices on common surfaces, and apply the relevant workplace guidance from state and federal authorities.”

20. On March 30, 2020, Governor Northam issued Executive Order 55, which directed “All individuals in Virginia” to “remain at their place of residence, except as provided below by this Order and Executive Order 53.”

21. Executive Order 55 specifically prohibited “All public and private in-person gatherings of more than 10 individuals” including “parties, celebrations, religious, or other social events, whether they occur indoor or outdoor.”

22. Violation of Executive Order 53 or 55 is a Class 1 misdemeanor, carrying a penalty of up to 12 months incarceration and/or a \$2500 fine. Va. Code § 18.2-11.

23. All religious services or gatherings of any kind with more than 10 people were specifically criminalized as a result of this order.

24. Combating the virus has proved difficult as the science underlying the orders has continued to evolve. For instance, the Centers for Disease Control and Prevention recently announced that the virus is not thought to spread easily by touching common surfaces.⁴

25. Though virtually all Governors have had to take action in response to COVID-19, fifteen states⁵ exempted religious gatherings from attendance limitations during the pandemic. *See* Order, *Berean Baptist Church v. Cooper*, no. 4:20-CV-81, ECF No. 18 (E.D.N.C.) (granting Temporary Restraining Order).

26. Though beginning broad in scope, the order exempted many activities from its ban including “the operation of businesses [listed above] not required to close to the public under Executive Order 53.”⁶

27. There was no exception provided for religious services or religious gatherings.

28. The Orders provides no conditions under which more than 10 individuals can meet for religious purposes, even though nearly all businesses may have gatherings of more than 10 people if certain protections were administered.

29. Accordingly, the Orders prohibit all religious leaders from conducting in-person religious services and church-goers from attending them if more than 10 people attend, regardless of the measures taken to reduce or eliminate the risk of the virus spreading. Meanwhile, the list deems the continuity of services provided by home improvement stores, coffee and donut shops,

⁴ Centers for Disease Control and Prevention, How COVID-19 Spreads, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited May 22, 2020)

⁵ Pennsylvania, West Virginia, Ohio, Michigan, North Dakota, South Dakota, Utah, Colorado, Arizona, Texas, Arkansas, Tennessee, South Carolina, Georgia, and Florida

⁶ Executive Order 55 also exempted “the gathering of family members living in the same residence” when the family is within its home.

laundromats, and liquor stores to be so necessary for society that these activities are permitted to continue under the Orders, with more than 10 people, despite the existence of the very same risk Defendants rely on to stymie the exercise of fundamental rights. Even “non-essential” businesses are treated better under the Order than small religious gatherings.

30. Executive Order 53 was originally set to expire on April 23, 2020, but has been extended multiple times and was last set to expire on May 28, 2020 in Northern Virginia (Executive Order 61 and 62).

31. However the Governor has claimed the authority to extend it further if he deems necessary and has announced he has not yet decided when he will allow it to expire for Northern Virginia, where the Plaintiffs live and the location of St. Catherine of Siena Catholic Church.

32. Executive Order 55 is set to remain in effect through June 10, 2020 unless extended or amended by the Governor by further executive order.

33. Though the Governor has announced new, somewhat lesser restrictions on churches under Phase 1, probably in light of another lawsuit, this does not remedy the existing and continuing deprivation of the Plaintiffs’ constitutional rights for as long as the Governor decides it is warranted in his discretion. Nor does it resolve the essential problem that the Government has inappropriately made a determination that religious gatherings and activities are nonessential and may be subject to more stringent restrictions than many non-religious activities. Phase 1 regulations are more imposing on churches and religious gatherings than they are on essential retail. *See* Executive Order 61.

34. Moreover, the Governor has publicly warned that future outbreaks or waves of contagion could trigger future lockdown, so the Diaz-Bonilla family is in imminent threat of being placed again in a position which disallows them from exercising their religion.

IMPACT OF THE ORDERS ON THE DIAZ-BONILLA FAMILY

35. Prior to the implementation of the Orders, Mariano and Rebecca Diaz-Bonilla and their 10 children exercised their sincerely held religious beliefs together as a family by, among other things: praying in church in front of the Lord present in the Holy Eucharist, going to the Sacrament of Reconciliation (Confession) at their church (John 20:21-23; James 5:16), receiving (often daily) the Sacrament of the Eucharist (Holy Communion) from their parish priest (John 6:53-58), praying on their private property with their Priest and other believers, studying the faith with a fellow believer, studying the Catechism and the Bible with their priest or fellow believers at their home. (Catechism of the Catholic Church),

36. The Diaz-Bonilla family sought and received approval from Fairfax County to erect a “prayer path” of the Stations of the Cross (“Stations”) on their property in Spring 2019 as a physical guide to and manifestation of prayer and meditation for themselves and other believers who join them. The Diaz-Bonilla family invited and received Bishop Michael Burbidge, Bishop of the Arlington Diocese, to their property to bless the Stations prior to the implementation of the Orders.

37. It is crucial to Mariano and Rebecca Diaz-Bonilla not only that they participate in these activities themselves, but that they include their children in the outworking of their faith, as they believe they have a religious and moral duty to train their children in the ways of the faith. **See Deuteronomy 6:6-9, Proverbs 22:6, Ephesians 6:4.** This belief is further evidenced in their having homeschooled all of their 10 children at one point or another (currently four) under the Virginia Religious Exemption Statute. It is therefore of little consolation that Mariano or Rebecca could participate in some of these activities individually without their children.

38. As a result of the Orders, the Diaz-Bonilla family is able to take their entire family of 12 to: restaurants to order food; any number of retail stores (such as Walmart and Target) that sell food or pharmaceuticals among a vast array of other items; electronics retailers; home improvement stores; lawn and equipment retailers, gas stations or convenience stores; pet stores; office supply stores; laundromats and drycleaners; or even beer, wine, and liquor stores, if those businesses, deemed essential by the Governor's order, adhere to certain social distancing requirements.

39. However, under the Orders, the Diaz-Bonilla family cannot go to church or even invite a priest or fellow parishioner to their own home for religious purposes, no matter how strictly the family engages in social distancing and sanitization practices.

40. The impacts of the Orders are quite sobering for both the Plaintiffs and other people of faith in Virginia. Under the terms of the Orders, the family can no longer attend church for Sunday Mass, even if following social distancing protocols stricter than those allowed for secular establishments deemed essential.

41. Under the Orders, neither can the family simply visit the church by themselves to pray, even if following social distancing protocols stricter than those allowed for secular establishments deemed essential (as the church is neither an essential business nor a gathering of family members in their residence).

42. Under the Orders, the family cannot go to their parish priest to receive the sacrament of the Eucharist,⁷ even if following social distancing protocols stricter than those allowed for secular establishments deemed essential.

43. Under the Orders, the family cannot attend their daughter's First Holy Communion that was scheduled for this May, now that she has reached the age of reason in the Roman Catholic Church (age 7). The First Holy Communion Mass is now postponed indefinitely. Even if the Pastor reschedules First Holy Communion Mass for individual families on account of the Orders, the Diaz-Bonilla, a group of more than 10, would not be allowed to attend due to the arbitrary 10-person limit, even if following social distancing protocols stricter than those allowed for secular establishments deemed essential.

44. Under the Orders, the family could not attend the wedding Mass of Mr. Diaz-Bonilla's Goddaughter in Staunton, Virginia in April 2020, where he was scheduled to read Holy Scripture at the Mass.

45. Under the Orders, the family cannot and could not attend a funeral of a family member or fellow believer.

46. Under the Orders, the family can no longer invite other parishioners to their property to pray the outdoors Stations of the Cross, an ancient and traditionally communal prayer, even if following social distancing protocols stricter than those allowed for secular establishments deemed essential.

⁷ The Eucharist is crucially important, as to the Diaz-Bonilla family and other Roman Catholics it is the physical manifestation of Christ. Catechism of the Catholic Church, Part II, Sec. II, Art. III.

47. Shockingly, under the Orders, a priest is not even able to visit the family to administer last rites if one of the family members were dying (whether by the coronavirus or something unrelated), even if following social distancing protocols stricter than those allowed for secular establishments deemed essential.

48. But for the Order and Defendants' enforcement thereof, the Plaintiffs' church could continue offering Mass taking the social distancing precautions like those taken by "essential" (and even some nonessential) that Defendants continue to allow to operate in the Commonwealth (and Northern Virginia counties specifically under Executive Orders 61 and 62).

49. By exempting thirteen broadly defined categories and purposes from the 10-person ban, but subjecting to the ban all similar gatherings for religious purposes, the Governor is deeming religious purposes inferior to each of the allowable secular purposes. This is a judgment that the government is not constitutionally permitted to make.

50. The Governor's Orders also impermissibly and arbitrarily trusts citizens to comply with social distancing requirements in any of the thirteen broadly defined exempted secular activities involving groups of more than 10, but does not trust the same citizens to follow the same requirements for similar gatherings if they are religious in nature.

51. Under the Orders' exempted activities, the Plaintiffs may go as a family to the bakery for bread and the wine store for wine if they follow social distancing practices, but they are specifically precluded from going to church as a family for Holy Communion under any circumstances. For the family to seek Communion from the church instead of bread and wine from the Walmart turns the activity into a class 1 misdemeanor under the Orders.

52. The Orders impermissibly ban certain religious activities and yet allow the secular counterparts with the exact same or greater risk to public health.

53. These Orders have violated the cherished constitutional rights of Plaintiffs for two months.

54. Each day under the status quo that passes is a serious continuing infringement on the Plaintiffs' constitutional rights.

CONTINUED UNEQUAL TREATMENT OF PLAINTIFFS' RIGHTS UNDER PHASE 1

55. Even under the Phase One reopening procedures recently announced by Governor Northam and not yet implemented in Northern Virginia, Plaintiffs and all Virginians of Faith continue to receive unequal treatment.

56. In both the current "Phase 0" and Phase 1, the Orders inappropriately consider free exercise, First Amendment, and the other rights of the Plaintiffs and other citizens, to be "nonessential" while the allowing Virginians to access home improvement stores, lawn equipment suppliers, and liquor stores without the same limitations.

57. First, under Phase 1, religious gatherings remain in a second-class status in terms of attendance. Plaintiffs do not object to following reasonable social distancing and sanitization practices. However, while certain businesses (life-sustaining or not) are deemed essential retail businesses by the Orders and allowed to operate without regard to either the 10-person limit presently (Phase 0) or the 50% of fire marshal capacity limit in Phase 1, churches are subjected to these limitations without justification and even when similarly situated.

58. Instead of being subjected to the 10-person limit, churches and religious become subject to a limitation of "50% of the lowest occupancy load on the certificate of occupancy of the room or facility in which the religious services are conducted." This is similar to certain non-essential services, but it is much more onerous than the restriction placed on businesses deemed essential in either Phase 1 or even under the present, most restrictive, phase of the order.

59. Second, the Orders also treat all employers and employees as a superior class to religious congregants as “the presence of more than 10 individuals performing functions of their employment is not a ‘gathering’” subject to numerical restrictions.

60. Next, the Orders attempt to regulate the manner Plaintiffs and their church celebrate Holy Communion. The Plaintiffs, consistent with the Roman Catholic Church, hold a sincerely held religious belief that the elements of Communion are the body and blood of Jesus.

61. While the Roman Catholic Church, including the Plaintiffs’ parish, has established practices of passing the elements of Communion in accordance with their religious beliefs that go back thousands of years, Executive Order 61 and its implementing regulations Safer at Home: Mandatory Requirements for Religious Services (Exhibit 5) have asserted its own rules on how to distribute the Holy Communion.

62. The Plaintiffs’ belief and religious practice in the Roman Catholic Church and their parish is that only priests may touch the communion elements and administer it to the parishioners.

63. Executive Order 61 and the regulations prohibit Plaintiffs from receiving Communion in this way as it forbids any items being “passed to or between attendees, who are not family members” of one another. The Priest is not a member of the Diaz-Bonilla family as defined by Executive Order 61. Additionally, Executive Order 61 mandates that “any items used to distribute food or beverages [presumptively including the wine and bread of the Eucharist] must be disposable and used only once and discarded.”

64. Fourth, Executive Order 61 and its implementing regulations loosens attendance restrictions on farmer’s markets and other non-essential entities conducting their activities outdoors, but does not provide a similar allowance for churches or religious gatherings (such as

the Plaintiffs assembling with their priest or other believers on their property to pray through the Stations of the Cross).

65. A number of lawsuits have been brought in various jurisdictions challenging similar Executive Orders. The Department of Justice, citing the reasoning of the Sixth Circuit Court of Appeals decision in favor of religious congregants, has issued a Statement of Interest (attached as an exhibit) supporting similar constitutional claimants in the face of Governor Northam's Executive Orders in Virginia.

66. In addition to the states that never imposed a limitation on the number of people who could attend religious gatherings, other states have already lifted restrictions on religious gatherings. Some district courts, as well as the Sixth Circuit Court of Appeals have already issued injunctions against enforcing executive orders that have shut down religious gatherings while allowing numerous secular exceptions. *See, e.g., Roberts v. Neace*, -F.3d-, No. 20-5465, 2020 WL2316679, (6th Cir. May 9, 2020).

67. As a result of this arbitrary and unequal treatment of religious activities compared to their secular counterparts, the Plaintiffs bring the following claims for relief under the United States Constitution, Constitution of Virginia, and Virginia law.

CLAIMS

COUNT I – FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT TO THE U.S. CONSTITUTION

(42 U.S.C. § 1983)

(By all Plaintiffs against all Defendants)

68. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as if fully set forth herein.

69. The Orders and Defendants' enforcement thereof violate the First Amendment, both facially and as-applied to Plaintiffs. The First Amendment of the Constitution protects the

“free exercise” of religion. Fundamental to this protection is the right to gather and worship. *See W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943) (“The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts ... [such as the] freedom of worship and assembly.”). The Free Exercise Clause applies to the states through the Due Process Clause of the Fourteenth Amendment. *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

70. The Plaintiffs have sincerely held religious beliefs that they should faithfully seek the Sacrament of the Eucharist (Holy Communion) from a priest on a daily basis and at a minimum receive the Sacrament as a family on a weekly basis; engage in prayers of adoration at the church in front of the Blessed Sacrament; and assemble with other believers to pray (among other beliefs incorporated from previous paragraphs).

71. The Plaintiffs’ sincerely held religious beliefs are burdened in a number of ways including, but not limited to, that they are prohibited from attending Mass as a family, going to church as a family (even with no others present) to pray before the Holy Eucharist, assembling with another family or even a single other individual to pray anywhere (see Hebrews 10:25), or pray through the communal and traditional Stations of the Cross they erected on their property with another believer.

72. As the Supreme Court has noted, “a law burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny.” *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993).

73. “A law is not generally applicable if its prohibitions substantially underinclude non-religiously motivated conduct that might endanger the same governmental interest that the law is

designed to protect.” *Stormans, Inc. v. Wiesman*, 794 F.3d 1064, 1079 (9th Cir. 2015) (citing *Lukumi*, 508 U.S. at 542–46). “In other words, if a law pursues the government’s interest ‘only against conduct motivated by religious belief,’ but fails to include in its prohibitions substantial, comparable secular conduct that would similarly threaten the government’s interest, then the law is not generally applicable.” *Id.*

74. The Orders are neither neutral nor of general application. Though the Orders purport to broadly apply to all gatherings of more than 10 people as any such gathering is a risk to allow the spread of the virus, the Orders are actually underinclusive because while the Orders forbid any religious gathering of more than 10 people, the Orders contain a laundry-list of exceptions for non-religious services favored by the Governor despite the health risk which is used to justify the ban in the first place.

75. The Governor has deemed thirteen broadly defined categories of activities to be “essential” and thus exempt from a limit on the number of people present. These non-religious activities, which the Governor deemed as more important than any religious gathering, include: visiting gas station convenience stores for any purpose; any shop selling food including “non-essential” donut, ice-cream, and dessert shops; beer, wine, and liquor stores; dry cleaners; and home improvement and garden stores. *See* Executive Orders 53 and 55.

76. In these activities deemed essential by the Governor, individuals may gather in groups more than 10 so long as certain physical distancing practices are respected.

77. In a typical trip to these exempted establishments, patrons will inevitably pass within six feet of one another despite even the best attempts of establishments to direct foot traffic and comply with social distancing practices.

78. Likewise, there is no way to ensure all patrons will abide by social distancing and hygiene guidelines in these establishments.

79. Many of the items these establishments provide and that the patrons will purchase are not essential.

80. The Governor has justified his order on account of evidence that COVID-19 can spread easily from person-to-person, especially in crowded indoor areas.

81. Under the evidence relied upon by the Governor and his team in implementing the Orders, virus transmission is likely in these businesses allowed to host more than 10 people, yet the Governor decided to allow it none-the-less.

82. In addition to the categories of “essential” activities, non-essential retail is limited to 10 patrons, but there is no restriction on the number of employees present. Further, professional services may also exceed the 10-person limit where the professional business deems necessary.

83. The Orders classify religious gatherings in the non-essential category of “parties, celebrations, . . . or other social events” which are entirely prohibited among groups including more than 10 under the Order still in effect in Northern Virginia.

84. This prohibition on any religious gathering of more than 10 people precludes the Diaz-Bonilla family of twelve people from participating in *any* religious gathering outside of their own home or with *any* other person no matter what social distancing or sanitization protocols are practiced.

85. The Plaintiffs do not dispute that some of the services exempted in the Order are essential, such as food and water. However, for the Plaintiffs, acting out their faith with their family such as by praying in church as a family, receiving spiritual guidance from their priest at church together or their home, receiving Holy Communion from their priest, and praying with other

believers is as “essential” as food and water if not more so. (Matthew 4:4 “Man shall not live by bread alone”; John 6:35; Luke 22:17-20).

86. The Plaintiffs believe that the nature of their faith, ultimately to prepare their souls to meet their Maker, is especially “essential” during a pandemic in which the Governor asserts that death is more imminent. The Governor’s justification for the Orders, the life-threatening nature of the virus, also increases the importance of the spiritual sustenance the Plaintiffs rightly seek.

87. The Defendants have more than substantially burdened Plaintiffs’ free exercise of their religion: in addition to relegating all faith activities to a second or third-class status, the Defendants’ Orders subject the Plaintiffs (and any priest or person present with them) to criminal penalties for merely praying at church, receiving Communion from a priest, or praying with another believer on their property.

88. Laws and government actions that burden religious practice and are either not neutral or not generally applicable must satisfy a compelling governmental interest and be narrowly tailored to achieve that end.

89. The Orders, on their face and as applied, specifically target the Plaintiffs’ sincerely held religious beliefs and set up a system of individualized exemptions that permits similarly situated businesses or non-religious entities to continue operations under certain guidelines while prohibiting religious gatherings from operating with similar guidelines.

90. Defendants’ mandates are not “narrowly tailored” to further any compelling governmental interest. Defendants have granted numerous special exemptions to their bans on public gatherings and conduct, including for both purportedly “essential” and even clearly non-essential businesses and activities, provided that social distancing practices are observed. Since these gatherings may be permitted, there can be no doubt that Defendants may, and therefore must,

permit Plaintiffs to engage in equivalent religious activities and services provided that Plaintiffs also adhere to the social distancing guidelines currently in place.

91. Requiring Plaintiffs to abstain from religious gatherings, praying at church, or receiving Communion despite substantial modifications to satisfy the public health interests at stake, violates Plaintiffs' Constitutional right to free exercise of religion. The state does not have the power under our Constitutional scheme to decree that as to faith activities, "streaming" (for those congregations and parishioners with the wealth and technological acumen to partake of such limited substitutes) is "good enough" when at the same time the state protects the media organizations' First Amendment rights to freedom of the press while denying the Plaintiffs' First Amendment Free Exercise of Religion.

92. For the Plaintiffs, Online Masses and Sacraments are no substitute for actually being present and receiving the Eucharist. To the Plaintiffs, the online streaming of Mass and Sacraments is the equivalent of merely showing an online representation of food to a hungry child. The Plaintiffs must be physically present with a priest to receive Holy Communion.

93. Without showing a compelling government interest or narrow tailoring, the Commonwealth, through the Governor's orders, have imposed significantly more restrictive conditions upon religious activities than similarly situated secular activities.

94. For instance, under the Orders the Plaintiffs may visit the bakery and the wine shop as a family to purchase bread and wine while following certain social distancing practices. At the same time, the Plaintiffs are prohibited from visiting their church to receive Communion no matter what social distancing practices the Plaintiffs or their church follows.

95. Even under Phase 1, the Plaintiffs' free exercise rights are unlawfully and unjustifiably burdened as the Orders prohibit Plaintiffs from celebrating Holy Communion in accordance with their faith.⁸

96. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined from implementing and enforcing the Orders.

97. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory relief and temporary, preliminary, and permanent injunctive relief invalidating and restraining enforcement of the Orders.

98. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

**COUNT II – FREE SPEECH CLAUSE OF FIRST AMENDMENT TO THE U.S.
CONSTITUTION**

(42 U.S.C. § 1983)

(By all Plaintiffs against all Defendants)

99. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as if fully set forth herein.

100. The Orders and Defendants' enforcement thereof violate the First Amendment, both facially and as-applied to Plaintiffs.

⁸ Other violations of the Plaintiffs' free exercise and other rights are described in previous paragraphs, including, but not limited to paragraphs 54-63.

101. Under Defendants' Orders, religious gatherings, Mass, attending church as a family in any way, and even times of prayer with a single other individual at the Plaintiffs' home are prohibited.

102. Plaintiffs engage in protected speech through prayer with other believers in the church, praying with other believers on their own property (including, but not necessarily limited to the Stations of the Cross), engaging in religious discussions with parishioners, and worship.

103. The Plaintiffs further engage in speech and/or expressive conduct by the simple act of living out their faith by attending Mass, kneeling in a church to pray, and seeking the sacraments, which communicates to all those around them that their faith and hope are in God during a time of fear and danger.

104. Defendants' imposition of the Orders is unreasonable and has a chilling effect on protected speech by outright banning in-person religious gatherings at the pain of criminal penalty. Additionally, Sheriffs are not expected to enforce every violation of the 10-person gathering ban, but the State has failed to provide any guidance as to what violations would be prioritized, leaving it up to the Sheriffs' unfettered discretion to decide which violations to enforce. Such a lack of standards along with a grant of such discretion renders the Orders unconstitutional both facially and as they are applied.

105. The Orders are unconstitutionally overbroad, and therefore void as a matter of law, both on their faces, and as they are applied.

106. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined from implementing and enforcing the Orders.

107. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory relief

and temporary, preliminary, and permanent injunctive relief invalidating and restraining enforcement of the Orders.

108. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

**COUNT III - FIRST AMENDMENT FREEDOM OF ASSEMBLY CLAUSE OF THE
FIRST AMENDMENT OF THE U.S. CONSTITUTION**

(42 U.S.C. § 1983)

(By all Plaintiffs against all Defendants)

109. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as if fully set forth herein.

110. The Orders and Defendants' enforcement thereof violate the First Amendment, both facially and as-applied to Plaintiffs.

111. The First Amendment of the Constitution protects the "right of the people peaceably to assemble."

112. The Freedom of Assembly Clause was incorporated against the states in *De Jonge v. Oregon*, 299 U.S. 353 (1937).

113. "The right of free speech, the right to teach, and the right of assembly are, of course, fundamental rights." *Whitney v. California*, 274 U.S. 357, 373 (1927). When a government practice restricts fundamental rights, it is subject to "strict scrutiny" and can be justified only if it furthers a compelling government purpose and, even then, only if no less restrictive alternative is available. *See, e.g., San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 16-17 (1973); *Dunn v. Blumstein*, 405 U.S. 330 (1972).

114. The Executive Orders violate the Plaintiffs' right to peaceably assemble whether on their own property for religious purposes or otherwise.

115. The Executive Orders banning any in-person assembly of 10 or more people preclude the Diaz-Bonilla family from assembling with any other person outside of their immediate family, including, but not limited to, their priest or fellow parishioners.⁹

116. The Executive Orders even forbid the Diaz-Family assembling at church, even by themselves for worship or prayer, as the family has more than 10 people.

117. This ban limits the assembly of the Diaz-Bonilla family with their priest, fellow believers (or even one additional fellow believer), and others, even if the family adheres to CDC social distancing regulations or the regulations imposed on businesses deemed essential.

118. The Executive Orders' outright ban on groups of more than 10 for religious purposes does not serve any legitimate, rational, substantial, or compelling government interest, and the State has alternative, less restrictive means to achieve any interest that it might have.

119. Since lesser restrictions designed to limit the spread of the disease have been allowed for similarly situated organizations (such as take-out food), imposing a total restriction on all gatherings of more than 10 individuals for religious gatherings is not the least restrictive means of achieving Defendants' public safety goals.

120. Requiring Plaintiffs to abstain from religious gatherings, despite substantial modifications to satisfy the public health interests at stake, violates Plaintiffs' Constitutional right to peaceably assemble.

⁹ The ban also precludes the Plaintiffs from hosting or gathering any other individual for political matters including related to the Fairfax Primary Elections in June or petitioning the government for redress of these grievances.

121. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined from implementing and enforcing the Orders.

122. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory relief and temporary, preliminary, and permanent injunctive relief invalidating and restraining enforcement of the Orders.

123. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

**COUNT IV - DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT
TO THE U.S. CONSTITUTION**

(42 U.S.C. § 1983)

(By all Plaintiffs against all Defendants)

124. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as if fully set forth herein.

125. The Orders and Defendants' enforcement thereof violate Plaintiffs' substantive due process rights secured by the Fourteenth Amendment to the U.S. Constitution.

126. Under the Due Process Clause of the Fourteenth Amendment, no State shall "deprive any person of life, liberty, or property, without due process of law." The fundamental liberties protected by this Clause include most of the rights enumerated in the Bill of Rights. *See Duncan v. Louisiana*, 391 U.S. 145, 147–149 (1968). In addition, these liberties extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs. *See, e.g., Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972); *Griswold v. Connecticut*, 381 U.S. 479, 484–486 (1965).

127. Plaintiffs' rights to freedom of religion, assembly, speech, and travel are fundamental rights protected by the U.S. Constitution. *See, e.g., Aptheker v. Secretary of State*, 378 U.S. 500, 520 (1964); *Kent v. Dulles*, 357 U.S. 116, 127 (1958).

128. When a government practice restricts fundamental rights such as the right to practice religion freely, assemble peacefully, speak, and travel, it is subject to "strict scrutiny" and can be justified only if it furthers a compelling government purpose, and, even then, only if no less restrictive alternative is available. *See, e.g. Memorial Hospital v. Maricopa County*, 415 U.S. 250, 257-258 (1974); *Dunn v. Blumstein*, 405 U.S. 330, 339-341 (1972); *Shapiro v. Thompson*, 394 U.S. 618, 89 (1969), *Maher v. Roe*, 432 U.S. 464, 488 (1977).

129. Strict scrutiny applies to Plaintiffs' claims because the Executive Orders mandate that Plaintiffs stay at home, infringing on their fundamental rights to freedom of religion, assembly, speech, and travel. These Orders do not permit Plaintiffs to exercise these rights, even while conforming to the CDC guidelines for social distancing, unless Defendants deem them "essential" or as participating in "essential" activities.

130. Defendants' mandates are not "narrowly tailored" to further any compelling governmental interest. Defendants have granted numerous special exemptions to their bans on public gatherings, including for purportedly "essential" businesses and activities, provided that social distancing practices are observed. Since these gatherings can be permitted, there can be no doubt that Defendants may, and therefore must, permit Plaintiffs to engage in constitutionally-protected religious activities, provided that Plaintiffs also adhere to the social distancing guidelines.

131. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined from implementing and enforcing the Orders.

132. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory relief and temporary, preliminary, and permanent injunctive relief invalidating and restraining enforcement of the Orders.

133. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

**COUNT V - EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT
TO THE U.S. CONSTITUTION**

(42 U.S.C. § 1983)

(By all Plaintiffs against all Defendants)

134. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as if fully set forth herein.

135. The Orders and Defendants' enforcement thereof violate the Fourteenth Amendment, both facially and as-applied to Plaintiffs. The Fourteenth Amendment of the Constitution provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." Equal protection requires the state to govern impartially—not draw arbitrary distinctions between individuals based solely on differences that are irrelevant to a legitimate governmental objection.

136. Defendants intentionally and arbitrarily categorize individuals and conduct as either "essential" or "non-essential." Those persons classified as "essential," or as participating in essential services, are permitted to go about their business and activities provided certain social

distancing practices are employed. Those classified as “non-essential,” or as engaging in non-essential activities, are required to stay in their residence, unless it becomes necessary for them to leave for one of the enumerated “essential” activities.

137. Importantly, the government has arbitrarily defined all gatherings for religious purposes as nonessential, even those similarly situated with purposes deemed essential under the Orders.

138. Strict scrutiny under the Equal Protection Clause applies where, as here, the classification impinges on a fundamental right, including the right to practice religion freely, to right to free speech and assembly, and the right to travel, among others.

139. Defendants cannot satisfy strict scrutiny, because their arbitrary classifications are not narrowly tailored measures that further compelling government interests, for the reasons stated above.

140. Specifically, gatherings of more than 10 individuals are exempted from the Executive Order’s prohibition for dozens of reasons deemed essential by the Governor, similarly situated religious activities are forbidden even though secular activities are exempted.

141. The Executive Orders allow:

- a. More than 10 people to congregate inside of restaurants to order a donut or other food for take-out if adhering to certain social distancing practices but prohibits the same individuals going to church and receiving Communion under the same, similar, or any social distancing practices.
- b. More than 10 people to enter a beer, wine, or liquor store for the purpose of obtaining wine but outlaws the same individuals entering a church to receive Communion under the same terms and social distancing practices

- c. More than 10 patrons to gather, walk the aisles, and shop in grocery stores, large retailers (like Walmart or Target), electronics retailers, and other “essential” shops with certain social distancing practices attempted, but forbids those same families from walking the pews and sitting six feet apart for religious purposes.
- d. More than 10 shoppers to wait in crowded grocery stores, staggered six feet apart at the check-out line, to feed their families physically, but criminalizes families like the Plaintiffs’ from waiting in a line six feet apart to feed their families spiritually through prayer or sacramental Communion.
- e. Food delivery and home improvement services to continue in individual homes notwithstanding the general prohibition on 10-person gatherings while forbidding a priest from visiting the Plaintiffs to minister to the family or administering the Sacrament of Reconciliation (Confession).
- f. Up to 10 patrons and no restriction on the number of employees present for non-essential retail, however, Mass and other religious gatherings have been limited to 10 total individuals including the Pastor or Priest.

142. Of particular concern, the Governor defers to and trusts “business operations offering professional services” to remain open without regard to any arbitrary limit on number of people present and without a determination of whether the business is essential. These professional services are only told that they “*should* utilize teleworking *as much as possible*.” Executive Order 53 ¶ 8. However, “[w]here teleworking is not feasible” the business is only required to follow standard social distancing, sanitization, and other workplace guidance. *Id.* The Orders permit these professional businesses to determine for themselves the extent to which they will utilize teleworking but does not trust Priests, Ministers, and Congregants to make the exact same

decisions, with the exact same risks, in a religious context. A church or religious gathering over 10 people is not permitted under any circumstances.

143. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined from implementing and enforcing the Orders.

144. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory relief and temporary, preliminary, and permanent injunctive relief invalidating and restraining enforcement of the Orders.

145. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

COUNT VI - FREE EXERCISE OF RELIGION UNDER VIRGINIA CONSTITUTION
ART. 1, § 16

(By all Plaintiffs against all Defendants)

146. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as if fully set forth herein.

147. Article I, § 16 of the Constitution of Virginia states:

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; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other. No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, **nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief**; but all men shall be free to profess and by argument to maintain their opinions in matters of religion, and the same shall in nowise diminish, enlarge, or affect their civil capacities. And the General Assembly shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this Commonwealth, to levy on themselves or

others, any tax for the erection or repair of any house of public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.

(Emphasis added)

148. The Plaintiffs have sincerely held religious beliefs that they should faithfully seek the Sacrament of the Eucharist (Holy Communion) from a priest on a daily basis and at a minimum receive the Sacrament as a family on a weekly basis; engage in prayers of adoration at the church in front of the Blessed Sacrament; and assemble with other believes to pray (among other beliefs incorporated from previous paragraphs).

149. Governor Northam's Orders substantially burdens the Plaintiffs' free exercise of religion in that:

- a. The Plaintiffs are prohibited from attending and their church is prohibited from offering Mass to groups of more than 10, even if all participants follow the guidelines of secular establishments. As the family itself is more than 10 people, this is a total preclusion on the family attending Mass or the like.
- b. The Plaintiffs are prohibited from going to their church as a family to pray, even if the family practices social distancing from others and even if the family members were the only ones in the sanctuary at the time.
- c. The Plaintiffs are prohibited from receiving Communion (including their daughter's first Communion) as a family from their priest, whether at their church, outside their church, or on their own property, under the 10-person gathering ban even if they follow CDC guidelines and strict social distancing requirements allowed at similar secular establishments.

- d. The Plaintiffs are forbidden from assembling with any other family or individual on their own property to pray, regardless of social distancing practices.

150. But for the Governor's orders, the Plaintiffs' church would make accommodations so that the Plaintiffs' family and others could at a minimum:

- a. Visit the church building and grounds to pray in family groups (which may exceed the 10-person limit) on a rotating basis so that families are always separated by six feet and otherwise complying with social distancing practices.
- b. Allow family groups of more than 10 to receive celebrate Mass or receive Holy Communion from the priest while respecting sanitization and social distancing practices.

151. The Commonwealth lacks a compelling, legitimate, or rational interest in the Orders' application of different standards for churches and religious gatherings than those applicable to exempted businesses or non-religious entities.

152. Even if the Orders' restriction on religious gatherings were supported by a compelling interest, which it is not, they are not the least restrictive means to accomplish the government's purported interest.

153. The Orders, on their face and as applied, fail to accommodate the Plaintiffs' sincerely held religious beliefs.

154. The Orders, on their face and as applied, specifically target the Plaintiffs' sincerely held religious beliefs and set up a system of individualized exemptions that permits similarly situated businesses or non-religious entities to continue operations under certain guidelines while prohibiting religious gatherings from operating with similar guidelines.

155. The Orders, on their face and as applied, constitute an express and overt religious gerrymander.

156. Even under Phase 1, the Plaintiffs' free exercise rights are unlawfully and unjustifiably burdened as the Orders prohibit Plaintiffs from celebrating Holy Communion in accordance with their faith.¹⁰

157. The Orders, on their face and as applied, have caused, are causing, and will continue to cause the Plaintiffs immediate and irreparable harm, and actual and undue hardship.

158. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their cherished liberties and constitutional rights unless Defendants are enjoined from implementing and enforcing the Orders.

159. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory relief and temporary, preliminary, and permanent injunctive relief invalidating and restraining enforcement of the Orders.

160. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees.

COUNT VII –FREEDOM OF ASSEMBLY UNDER VIRGINIA CONSTITUTION ART.

1, § 12

(By all Plaintiffs against all Defendants)

161. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as if fully set forth herein.

162. Article I, Section 12 of the Constitution of Virginia states:

That the freedoms of speech and of the press are among the great bulwarks of liberty, and can never be restrained except by despotic governments; that any

¹⁰ Other violations of the Plaintiffs free exercise and other rights were listed in previous paragraphs, including, but not limited to paragraphs 54-63.

citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; that the General Assembly shall not pass any law abridging the freedom of speech or of the press, nor the right of the people peaceably to assemble, and to petition the government for the redress of grievances.

(Emphasis added).

163. The Orders, on their face and as applied, are an unconstitutional prior restraint on the Plaintiffs' speech and right to assembly.

164. The Orders, on their face and as applied, unconstitutionally discriminate on the basis of viewpoint.

165. The Orders, on their face and as applied, unconstitutionally discriminate on the basis of content. Gatherings are allowed for many purposes, but gatherings for the purpose of religious speech are prohibited.

166. The Commonwealth lacks a compelling, legitimate, or rational interest in the Orders' application of different standards for churches and religious gatherings than those applicable to exempted businesses and non-religious entities.

167. The Orders, on their face and as applied, are not the least restrictive means to accomplish any permissible government purpose sought to be served by the Orders.

168. The Orders, on their face and as applied, are not narrowly tailored to serve the government's purported interest.

169. The Orders, on their face and as applied, do not leave open ample alternative channels of communication for the Plaintiffs.

170. The Orders, on their face and as applied, are irrational and unreasonable and impose unjustifiable and unreasonable restrictions on the Plaintiffs' constitutionally protected speech and right to assemble.

171. The Orders, on their face and as applied, impermissibly vest unbridled discretion

in the hands of government officials, including Governor Northam and his designees, to apply or not apply the Orders in a manner to restrict free speech and assembly.

172. The Orders, on their face and as applied, are underinclusive by limiting their prohibitions to only certain entities, organizations, or businesses deemed “non-essential.”

173. The Orders, on their face and as applied, are unconstitutionally overbroad as they chill and abridge the free speech and assembly rights of Plaintiffs.

174. On their face and as applied, the Orders’ violation of Plaintiffs’ rights to free speech and assembly have caused, are causing, and will continue to cause Plaintiffs’ to suffer immediate and irreparable injury and undue and actual hardship.

175. For the reasons stated in Plaintiffs’ Count III, requiring Plaintiffs to abstain from religious gatherings, despite substantial modifications to satisfy the public health interests at stake, violates Plaintiffs’ right to assemble freely under the Virginia Constitution as well.

176. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined from implementing and enforcing the Orders.

177. Plaintiffs have found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorney fees and costs.

COUNT VIII – VIRGINIA STATUTORY PROTECTIONS OF FREE EXERCISE
UNDER VA. CODE § 57-2.02

(By all Plaintiffs against all Defendants)

178. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as if fully set forth herein.

179. Virginia statute requires any government action that substantial burdens an individual's free exercise to satisfy strict scrutiny. Va. Code § 57-2.02. In other states and in the federal government similar laws are referred to as a Religious Freedom Restoration Act (RFRA).

180. "No government entity shall substantially burden a person's exercise of religion even if the burden results from a rule of general applicability unless it demonstrates that application of the burden to the person is (i) essential to further a compelling governmental interest and (ii) the least restrictive means of furthering that compelling governmental interest." Va. Code § 57-2.02.

181. For the purposes Va. Code § 57-2.02 "exercise of religion" means "the exercise of religion under Article 1, Section 16 of the Constitution of Virginia, the Virginia Act for Religious Freedom, or the First Amendment to the United States Constitution."

182. Governor Northam's Orders substantially burdened the Plaintiffs' free exercise of religion in that:

- a. The Plaintiffs are prohibited from attending and their church is prohibited from offering Mass to groups of more than 10, even if all participants follow the guidelines of secular establishments.
- b. The Plaintiffs are prohibited from going to their church as a family to pray, even if the family practices social distancing from others and even if the family members were the only ones in the sanctuary at the time.
- c. The Plaintiffs are prohibited from receiving Communion (including their daughter's first Communion) as a family from their priest, whether at their church, outside their church, or on their own property, under the 10-person gathering ban

even if they follow CDC guidelines and strict social distancing requirements allowed at similar secular establishments.

- d. The Plaintiffs are forbidden from assembling with any other family or individual on their own property to pray, regardless of social distancing practices.

183. But for the Governor's orders the Plaintiffs' church would make accommodations so that the Plaintiffs' family and others could at a minimum:

- a. Visit the church building and grounds to pray in family groups, even if more than 10, on a rotating basis so that families are always separated by six feet and otherwise complying with social distancing practices.
- b. Allow family groups of more than 10 to celebrate Mass or receive Holy Communion from the priest so long as social distancing (minimum of six feet) and other health and safety guidelines could be maintained.

184. Concerning religious exercise, the Executive Orders fail the test required by Virginia law because they are neither (i) "essential to further a compelling governmental interest" nor (ii) "the least restrictive means of furthering that compelling governmental interest."

185. Allowing groups to gather in groups of more than 10 is not essential to the purposes of the Orders as the Orders allow gatherings for dozens of purposes, but not religious purposes.

186. The Order forbidding religious gatherings of more than 10 is not the least restrictive means of furthering a compelling governmental interest.

- a. The Order could simply allow churches to operate under the same terms as "essential" businesses in the Commonwealth; that is with strict social distancing, six feet minimum separation between each family in the pews, and a plan to reduce personal interaction or congestion. Enforcement efforts could be limited to those

churches unwilling or unable to follow the basic requirements imposed on all other establishments that are allowed to remain open.

- b. The Order could at a minimum provide an exemption for families larger than 10 to attend church to pray, receive Communion, or otherwise practice their religion without violating the 10-person gathering ban.¹¹

187. Under the Governor's orders, meeting for religious purpose is an inferior purpose compared to other "essential" purposes and even some admittedly non-essential purposes.

188. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined from implementing and enforcing the Orders.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment against Defendants and grant the Plaintiffs the following relief:

A. An order and judgment declaring that the Orders, facially and as-applied to Plaintiffs, violate the First and Fourteenth Amendments to the U.S. Constitution, Article 1, §§ 12 and 16 of the Virginia Constitution, and Virginia Code § 57-2.02;

B. A temporary restraining order enjoining the enforcement of Executive Orders against the Diaz-Bonilla family or their church in excess of regulations imposed on similarly situated essential secular business activities.

C. A Preliminary Injunction pending trial and a Permanent Injunction upon judgment, restraining and enjoining Defendants from enforcing the Orders to ban religious gatherings or

¹¹ Plaintiffs are aware of the exemption allowing groups of 10 to continue living together in a household, but that exemption does not appear to apply outside the home, allow the family to go to their church, or allow the priest to come to them. Executive Order 55 ¶ 2(b)

subject them to more restrictive social distancing requirements than those imposed upon from similarly situated essential secular activities;

- D. For attorneys' fees and costs;
- E. Such other and further relief as the Court deems appropriate and just.

Date: May 22, 2020

By:

/s/William R. Thetford Jr.
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*Pro Hac Vice Motion Pending

VERIFICATION OF COMPLAINT

I, the undersigned, declare as follows:

1. I am a Plaintiff in this matter.
2. I have read the foregoing complaint and know the contents thereof.
3. The same is true of my own knowledge, except as to those matters which are

therein state on information and belief, and, as to those matters, I believe it to be true.

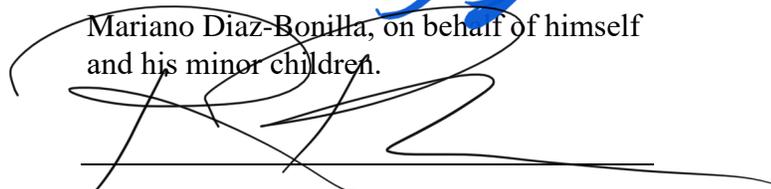
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: 5/22/2020



Mariano Diaz-Bonilla, on behalf of himself and his minor children.

Date: 5/22/2020



Rebecca Diaz-Bonilla

Date: 5/22/2020



Daniel Diaz-Bonilla

Date: 5/22/2020



Angela Diaz-Bonilla

CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2020, I will electronically file the foregoing Verified Amended Complaint with the Clerk of Court using the CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all counsel of record.

/s/ William R. Thetford Jr.