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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

**HORIZON CHRISTIAN SCHOOL, an
Oregon nonprofit corporation;
MCMINNVILLE CHRISTIAN
ACADEMY, an Oregon nonprofit
corporation; and LIFE CHRISTIAN
SCHOOL, an assumed business name,**

Plaintiffs,

v.

**KATE BROWN, GOVERNOR OF THE
STATE OF OREGON, in her official
capacity only,**

Defendant.

Civil No.

**PLAINTIFFS' COMPLAINT
(TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION)**

PARTIES, JURISDICTION AND VENUE

Plaintiffs, three Christian nonprofit schools located in Oregon, allege as follows:

1.

This Court has jurisdiction over this civil rights action because it raises federal

questions under the United States Constitution, specifically the First and Fourteenth Amendments, and under federal law, particularly 42 U.S.C. § 1983. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343. This Court has authority to grant the requested declaratory relief under 28 U.S.C. §§ 2201 and 2202, the requested injunctive relief under 28 U.S.C. § 1343, and FRCP 85, and reasonable attorneys' fees and costs under 42 U.S.C. § 1988 and §1920. The Court also has supplemental jurisdiction of all claims herein under 28 U.S.C. § 1367(a), and *Ex parte Young*, 209 US 123 (1908) (a plaintiff alleging a violation of federal law may seek prospective injunctive relief against a responsible state official). Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in this District, and Defendant resides in this District.

2.

Defendant Kate Brown is the Governor of the State of Oregon. Plaintiffs sue her in her official capacity only. All of Defendant's actions that have deprived Plaintiffs of rights under the U.S. Constitution have been taken under color of law.

3.

This Court has the authority to grant the requested injunctive relief under 28 U.S.C. § 1343(3); declaratory relief under 28 U.S.C. §§ 2201 and 220; and to grant costs, including reasonable docketing and attorneys' fees under 28 U.S.C. §§ 1920 and 1988.

4.

Plaintiffs bring this action on behalf of themselves, their students, the parents and guardians of their students, and Plaintiffs' employees.

5.

Defendant's Executive Order "EO" 20-28, issued June 12, 2020, states that "Oregon's institutions of **higher education** play a critical role in the social and economic wellbeing of our state. It is important, as we navigate reopening Oregon, and the challenges to come, that we ensure that higher education institutions can fulfil their missions while also protecting the health and wellbeing of their students, faculty, staff, administration, and broader communities." "I am ordering the following: ...For purposes of this Executive Order, 'colleges and universities' include "**public** universities listed in ORS 352.002, a community college operated under ORS chapter 341, and degree-granting private colleges and universities that operate in Oregon." And "in-person instruction, research, and residential activities at colleges and universities may only take place" if they comply with "requirements for face coverings, physical distancing, sanitization, monitoring, and isolation procedures." "This Executive Order" may "be enforced as permitted under ORS 431A.010. In addition to any other penalty that may be imposed under applicable laws, any person, business, or entity found to be in violation of this Executive Order" is "subject to the penalties described in ORS 401.990." The provisions of this EO "are effective June 14, 2020, and remain in effect until terminated by the Governor." (Emphasis added)

6.

But EO 20-30, issued June 30, 2020, states that "as recent large-scale outbreaks tied to" a "**house of worship** demonstrate, spikes in cases can occur rapidly." And EO 20-30 continues EO 20-27 without modification. EO 20-27, issued June 5, 2020, states, in relevant part, that "cultural, civic, and **faith-based** gatherings of more than 25 people are

prohibited.” (Emphasis added.)

7.

Defendant violated the First Amendment and parallel provisions of the Oregon Constitution by unilaterally decreeing that “public universities” must remain open for in person classes, but “houses of worship” and “faith-based gatherings” are “prohibited.” In terms of the claimed public health risks, there is no difference between these two sets of entities. For example, Defendant provides no reason why the Coronavirus would spread more quickly at a “faith-based gathering,” or a Christian elementary or high school, than in an Oregon State University classroom. That makes Defendant’s EOs arbitrary, irrational, unconstitutional, and unenforceable as to Plaintiffs. This is why Plaintiffs brought this action to enforce their federal and state constitutional rights.

8.

Fear of the coronavirus epidemic has gripped Oregon, the nation, and the world. In response to the initial surge in coronavirus cases, numerous states imposed “stay-at-home” orders in order to “flatten the curve” of the spread of the virus. Due to the unified efforts of the American people, the curve has flattened nationally, and in Oregon.

9.

In many states, these stay-at-home orders protect the constitutional rights of religious entities and believers during the epidemic, but not so in Oregon. Defendant, through her EOs, declared religious entities nonessential and commanded them to shut down. Defendant’s actions during the epidemic demonstrate an illegal and discriminatory hostility to religious practices, beliefs, and, institutions, and people of faith. She has violated the fundamental

religious liberties of Oregonians in violation of the First Amendment's Free Exercise Clause and parallel provisions of the Oregon Constitution.

10.

Plaintiffs sincerely believe that, especially in these uncertain times, Oregonians need the spirit of Almighty God.

11.

Oregon's religious schools are no less "essential" than its public universities to the health and wellbeing of its residents.

12.

Defendant has intentionally denigrated Oregon's religious schools and people of faith by relegating them to second-class citizenship.

13.

Defendant has no compelling justification for her discriminatory treatment of Plaintiffs and other religious schools. Nor has she attempted to tailor her EOs to the least restrictive means necessary to meet any arguable compelling interest.

14.

Plaintiffs intend to reopen at the end of this month and in early September 2020. Plaintiffs justifiably fear arrest and prosecution if they do so without immediate relief from this Court.

15.

Plaintiffs seek temporary and permanent injunctive relief against Defendant's EOs.

16.

Defendant shuttering Plaintiffs is illegal and unconstitutional on its face and as applied to Plaintiffs under the U. S and Oregon Constitutions.

17.

This Court has the authority to grant the requested injunctive relief under 28 U.S.C. § 1343(3), declaratory relief under 28 U.S.C. §§ 2201 and 2202, the claim for damages under 42 U.S.C. § 1983, and to grant attorney fees and costs under 42 U.S.C. § 1988 and 28 U.S.C. § 1920.

18.

Plaintiffs sincerely believe and teach the Gospel of Jesus Christ.

19.

Among other beliefs, Plaintiffs believe that the entire bible, Old and New Testaments, are a completed and infallible work called the Word of God. This work contains a completed revelation of God for mankind and is the final authority for all Christian faith and practice.

20.

Plaintiffs are passionate to share the love of God with their students, who form what they believe is their Christian school family.

21.

The assembly of Plaintiffs' students and teachers, the communal prayer and singing, and the informal conversation and fellowship among school members are all essential parts of a functioning Christian school.

22.

Plaintiffs' students cannot truly learn the Christian faith from home without forfeiting many of the great spiritual and religious benefits and comforts they receive from Plaintiffs. Zoom meetings are not the same as attending a Christian school in person in fellowship with other students and the faculty.

23.

Defendant illegally shuttered Plaintiffs by declaring them "nonessential" and forbidding Oregon residents from leaving their homes to attend religious schools.

24.

Defendant's EOs are facially unconstitutional in violation of the federal and state constitutional rights to the free exercise of religion, free speech, free assembly, and freedom of association.

25.

The epidemic is in a much different place today than it was in March 2020. At this point, it is widely reported that the epidemic "curve" has been substantially "flattened" statewide.

26.

There is no attempt at tailoring in the EOs, much less narrow tailoring. Every religious elementary and high school in Oregon has been shuttered. This has now gone on for about 5 months, and with no end in sight.

27.

Regardless of Defendant's purported reasons for this disparate treatment of Plaintiffs

and public universities, they cannot survive constitutional scrutiny. Under the Free Exercise Clause, a law is not generally applicable, and thus triggers strict scrutiny, when it “fail[s] to prohibit nonreligious conduct that endangers” the government’s interest “in a similar or greater degree” than the prohibited religious conduct. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 542 (1993). That is exactly what Defendant’s EOs do. They do not meet strict scrutiny.

28.

Plaintiffs are willing to comply with proper constitutional guidelines, provided by government officials with authority to issue those guidelines. But they cannot abide an indefinite shutdown of their religious schools while, for no legitimate reason, Defendant keeps Oregon’s public universities open, among other entities.

**FIRST CLAIM FOR RELIEF
(VIOLATIONS OF THE FIRST AND FOURTEENTH AMENDMENTS OF
THE U.S. CONSTITUTION—FREE EXERCISE—42 U.S.C. § 1983)**

29.

Plaintiffs incorporate all paragraphs above.

30.

Plaintiffs’ religious activities, including operating their schools, are protected by the Free Exercise Clause of the First Amendment of the Constitution of the United States. Those protections constrain Defendant through the Due Process Clause of the Fourteenth Amendment.

31.

The actions of Defendant in threatening forcible closure, prosecution, and fines

interfere with Plaintiffs’ free exercise by prohibiting religious activity in their school buildings, and otherwise prohibiting and interfering with Plaintiffs’ religious practices. The EOs interfere with Plaintiffs’ ability to carry out their religious doctrine, faith, and mission.

32.

The EOs violate the Free Exercise Clause of the First Amendment on their face and as applied to Plaintiffs.

33.

Plaintiffs are entitled to at least nominal damages for this infringement of their rights.

34.

Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendant is enjoined from implementing and enforcing her EOs against them. Religious schools serve as an essential service. The educational, psychosocial, and emotional wellbeing of Plaintiffs’ students must take precedence. Not only is Plaintiffs’ student’s wellbeing on the line during the pandemic, but so is Plaintiffs’ viability as religious organizations. They will suffer drastically should they not be allowed to gather in person for school.

35.

Plaintiff McMinnville Christian Academy “MCA” is an essential part of the McMinnville community. Its teachers provide an education that distance learning does not provide. It is a safe place for students to learn to communicate and have the healthy social interactions they lack when they are participating in online distance learning. Not only will MCA students suffer from online learning only, but so will MCA itself. It will not be able to

operate if it is not allowed to meet and conduct school in person, and it will have to permanently close. A minimum estimated 50 students would unenroll from Preschool-8th grade. It has already seen 11 students leave with the threat from Defendant's EOs and Oregon Department of Education mandates. It already had 7 students leave because of the uncertainty of the upcoming school year being in person or not. It also has families who heavily rely on the afterschool program who would potentially unenroll if MCA cannot provide that in-person service. 50 withdrawn students at its elementary tuition price of \$6,000, and 18 students at its preschool rate of \$7,125 would result in a loss of income of \$428,250. It would not be able to meet budget with the number of students it would have remaining, and would have to permanently close. MCA has 18 employees, and needs 10 students in each class to keep from terminating employees. It has parents calling daily about removing their child from MCA because of the possibility of distance learning. 98 families would be impacted by MCA closing. MCA has been educating students since 1994 and wants to continue educating future leaders. It cannot do that unless it is allowed to immediately reopen for students and employees in person.

36.

Plaintiff Horizon Christian School "HCS" has been serving families in Oregon as a private Christian School since 1977. It is the only PK-12 private school within 30 miles of Hood River. Its mission is to build a solid foundation for life by providing students with an excellent education that integrates academic achievement, Biblical truth, and Christian character development. It pledges to be an educational community that faithfully models the Christian life for the glory of God. Its vision is based on the example of Jesus Christ. It

believes that for it to be on mission, and to fulfill its stated vision and mission, its students need to be experience on-campus in-person learning. The American Association of Pediatrics says: “The importance of in-person learning is well-documented, and there is already evidence of the negative impacts on children because of school closures in the Spring of 2020.” HCS experienced this firsthand when one of its students, 13 years-old, committed suicide at the end of this Spring. It seemed to be the result of being isolated from her classmates. HCS never wants to experience that again, and is further committed to having on-campus learning. Defendant’s EOs force HCS to operate in a manner antithetical to its sincere religious beliefs, including the deprivation of the personal connections in education it values. If comprehensive distance learning is the only option available, HCS will be damaged, for example, as follows: Its commitment to its current and potential families over the past several months has been that it will have on-campus in-person learning. Because of the desire of its families to have on-campus learning, they made financial commitments to HCS. Nearly one-third, or about 60 current students, and 30 new students, would unenroll. With the average tuition around \$8,000, this could mean a financial loss of about \$720,000. HCS may not be able to survive that kind of financial loss. It is also not able to keep all teachers due to families unenrolling. It may have to terminate 4 or 5 full-time teachers. Safety for students is the number one priority of HCS and its parents. When HCS is able to be on mission and focusing on its vision, the safety of its students is most important. But that safety is not just physical. HCS and its families are committed to not only the physical safety, but the emotional, social, and spiritual safety of every student. This cannot be fully realized in distance learning. HCS and the other plaintiffs are willing and prepared to follow

the Ready School, Safe Learners guidelines to have on-campus learning.

37.

If Defendant's EOs remain in force, a minimum of about 40 students would unenroll from plaintiff Life Christian school "LCS." In addition, 20 other students have already unenrolled from LCS due to the uncertainty about whether in person education will be allowed. 60 withdrawn students at its elementary tuition price of \$6,662 would result in a loss of income surmounting to \$399,720. It is also possible that significantly more students may unenroll from LCS due to Defendant's EOs. A loss of income of this magnitude would decimate LCS. Current enrollment for the 2020-21 school year is at 175 students. LCS has 24 employees. If faced with this financial difficulty, employee terminations will be imminent. For example, the afterschool program teachers, one preschool teacher, one Kindergarten teacher, and one First Grade teacher, and other positions would need to be potentially terminated. Prior to the recent EOs, LCS enrollment numbers showed the necessity for two first grade teachers. Also, following Defendant's EO guidelines, LCS needed two teachers for that grade to safely follow the required safe learning protocols. LCS hired a second First Grade teacher to meet the guidelines and requirements first established in June for the "Ready Schools, Safe Learners" protocols. 147 families would be impacted by keeping the doors shut to LCS. Its Registrar has given numerous school tours to families strongly interested in enrolling their children at LCS. Those families have stated that their decision to enroll at LCS is contingent upon whether or not LCS will be able to meet for in person education. LCS Preschool classes would see further unenrollment based on Defendant's EOs not including preschool as one of the grades that would be required to meet

in person. Should annual revenue decrease by almost \$400,000, the viability of LCS will suffer tremendously, and extreme budget cuts will be consequential. LCS has been committed to educating the leaders of tomorrow for over 20 years. Its mission to provide an environment where students K-12 can be transformed by God and in turn transform the world around them is at risk of permanently ending due to Defendant's EOs.

38.

Under 42 U.S.C. §§ 1983 and 1988, and FRCP 65, Plaintiffs are entitled to declaratory relief and temporary, preliminary, and permanent injunctive relief invalidating and restraining enforcement of Defendant's EOs.

39.

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 under 42 U.S.C. § 1988.

**COUNT II
VIOLATIONS OF THE OREGON CONSTITUTION –
FREE EXERCISE OF RELIGION**

40.

Plaintiffs incorporate all paragraphs above.

41.

Plaintiffs' religious activities are protected by the Free Exercise Clauses of the Oregon Constitution. Article 1, Sections 2-3 state that "all men shall be secure in the Natural right, to worship Almighty God according to the dictates of their own consciences;" and "no law shall in any case whatever control the free exercise, and enjoyment of religious [sic]

opinions, or interfere with the rights of conscience.”

42.

The actions of Defendant in threatening forcible closure, prosecution, and fines, interfere with Plaintiffs’ free exercise by prohibiting religious activity in school buildings and otherwise prohibiting and interfering with Plaintiffs’ religious activities.

43.

Defendant’s EOs interfere with Plaintiffs’ ability to carry out their religious doctrine, faith, and mission.

44.

The EOs do not serve any compelling government interest and are not narrowly tailored to accomplish any government interest, compelling or otherwise, in the least restrictive manner.

45.

The EOs violate the Free Exercise Clauses of the Oregon Constitution on their face and as applied to Plaintiffs.

46.

Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights, including the permanent end of their schools because of financial difficulties the EOs cause unless Defendant is enjoined from implementing and enforcing the EOs against Plaintiffs.

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COUNT III
VIOLATIONS OF THE FIRST AND FOURTEENTH AMENDMENTS OF
THE U.S. CONSTITUTION – FREE SPEECH—(42 U.S.C. § 1983)

47.

Plaintiffs incorporate all paragraphs above.

48.

Plaintiffs’ rights to speak freely, peaceably assemble, and freely associate are protected by the Free Speech Clause of First Amendment of the U.S. Constitution. These protections constrain Defendant through the Due Process Clause of the Fourteenth Amendment.

49.

The actions of Defendant in threatening forcible closures, prosecution, and fines under the EOs interfere with Plaintiffs’ free speech by targeting and burdening their religious expression and association.

50.

Defendant’s EOs do not serve any compelling government interest, and are not narrowly tailored to accomplish any government interest, compelling or otherwise, in the least restrictive manner. They are not reasonable time, place, or manner restrictions because they burden substantially more speech than necessary to achieve the government’s claimed interests, and do not leave open ample alternative channels of communication. The EOs violate the Free Speech Clause of the First Amendment on their face and as applied to Plaintiffs.

51.

Plaintiffs are entitled to at least nominal damages for this infringement of their rights.

52.

Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendant is enjoined from implementing and enforcing her EOs.

53.

Under 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 EOs.

54.

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

55.

The actions of Defendant in threatening forcible closure, prosecution, and fines interfere with Plaintiffs' free speech by targeting and burdening their religious expression, including prohibiting communal prayer and singing.

56.

The EOs do not serve any compelling government interest, and are not narrowly tailored to accomplish any government interest, compelling or otherwise, in the least

restrictive manner.

57.

The EOs are not valid time, place, or manner restrictions on Plaintiffs' speech because they burden substantially more speech than necessary to achieve the government's interests and do not leave open ample alternative channels of communication. They violate the Free Speech Clause of the U.S. Constitution both on their face and as applied to Plaintiffs.

58.

Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendant is enjoined from implementing and enforcing the notice and orders.

**COUNT V
VIOLATIONS OF THE FIRST AND FOURTEENTH AMENDMENTS OF
THE U.S. CONSTITUTION – FREEDOM TO ASSEMBLE AND FREELY
ASSOCIATE—(42 U.S.C. § 1983)**

59.

Plaintiffs incorporate all paragraphs above.

60.

Plaintiffs' rights to peaceably assemble and freely associate are protected by the First Amendment of the U.S. Constitution. Those protections constrain Defendant through the Due Process Clause of the Fourteenth Amendment.

61.

The actions of Defendant in threatening forcible closure, prosecution, and fines under

the EOs interfere with Plaintiffs' freedom to assemble and freely associate by prohibiting any communal activity in their school buildings.

62.

The EOs do not serve any compelling government interest, and are not narrowly tailored to accomplish any government interest, compelling or otherwise, in the least restrictive manner. They also are not reasonable time, place, and manner restrictions because they burden substantially more speech than necessary to achieve the government's claimed interests and do not leave open ample alternative channels of communication.

63.

The EOs violate the freedom to peaceably assemble and freely associate protected by the First Amendment both on their face and as applied to Plaintiffs.

64.

Plaintiffs are entitled to at least nominal damages for this infringement of their rights.

65.

Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendant is enjoined from implementing and enforcing the EOs.

66.

Under 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 Defendant's EOs.

67.

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 under 42 U.S.C. § 1988.

COUNT VI

68.

Plaintiffs incorporate all paragraphs above.

69.

Plaintiffs' rights to peaceably assemble and freely associate are protected by the First Amendment to the U.S. Constitution.

70.

The EOs interfere with Plaintiffs' freedom to peaceably assemble and freely associate by prohibiting any communal activity in their schools. They do not serve any compelling government interest, and are not narrowly tailored to accomplish any government interest, compelling or otherwise, in the least restrictive manner. They are not reasonable time, place, and manner restrictions because they burden substantially more speech than necessary to achieve the government's claimed interests and do not leave open ample alternative channels of communication.

71.

The EOs both on their face and as applied to the Plaintiffs violate the First Amendment rights to freely associate and peaceably assemble.

72.

Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendant is enjoined from implementing and enforcing the EOs.

**COUNT VII
VIOLATIONS OF THE DUE PROCESS CLAUSE OF THE
FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION—(42 U.S.C. § 1983)**

73.

Plaintiffs incorporate all paragraphs above.

74.

The EOs and Defendant's enforcement thereof violate Plaintiffs' substantive due process rights secured by the Fourteenth Amendment to the U.S. Constitution.

75.

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."

76.

When a government practice restricts fundamental rights such as the right to practice religion freely, assemble peacefully, speak, and associate, 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.

77.

Strict scrutiny applies to Plaintiffs' claims because the EOs mandate that Plaintiffs' students and faculty stay at home, infringing on their fundamental rights to freely exercise

their religion, associate, and speak. Defendant’s EOs do not permit Plaintiffs to exercise these rights unless Defendant deems them “essential” or as participating in “essential” activities.

78.

Defendant’s mandates are not “narrowly tailored” to further any compelling governmental interest. Defendant has granted numerous exemptions for purportedly “essential” businesses and activities. Since these gatherings can be permitted, then Defendant may, and therefore must, permit Plaintiffs to engage in equivalent constitutionally protected activities on the same or similar terms.

79.

Plaintiffs are entitled to at least nominal damages for this infringement of their rights.

80.

Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendant is enjoined from implementing and enforcing the EOs.

81.

Under 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 EOs.

82.

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 under

to 42 U.S.C. § 1988.

COUNT VIII
DECLARATORY JUDGMENT—(28 USC § 2201)

83.

Plaintiffs incorporate all paragraphs above.

84.

As set forth herein, Defendant has and will continue to enforce the EOs against Plaintiffs. An actual controversy exists between Plaintiffs and Defendant as to whether Defendant possesses the power and authority to issue and enforce the EOs. An actual controversy exists between Plaintiffs and Defendant as to whether Defendant has the power and authority to issue an EO providing for any additional extension of the prohibitions set forth in other EOs.

85.

Soon after issuing EO 20-03, Defendant began issuing a series of related EOs aimed at preserving the public health and safety.

86.

Defendant issued EO 20-12 on March 23, 2020. In it, Defendant states that “it is essential to the health, safety, and welfare of the State of Oregon that, to the maximum extent possible, individuals stay at home or at their place of residence consistent with the directives set forth in my Executive Orders and guidance issued by the Oregon Health Authority.” It also prohibits what Defendant deems “non-essential social and recreational gatherings of individuals, outside of a home or place of residence” regardless of size “if a distance of at

least six feet between individuals cannot be maintained.”

87.

Although EO 20-12 makes no specific reference to gatherings at religious schools, neither does it distinguish between gatherings that Defendant deems “essential” and those she deemed non-essential by her. EO 20-12 at least implicitly impinges on Plaintiffs’ free exercise of religion as protected under Article I, §§ 2 and 3 of the Oregon Constitution, and the right to peaceably assemble and associate as protected under Article I, § 26 of the Oregon Constitution, and the First Amendment to the U.S. Constitution.

88.

Although Plaintiffs believe, not unreasonably, that EO 20-12 impinges on their constitutionally protected rights to peaceably assemble, associate, speak, and exercise their religious beliefs, Plaintiffs have complied with Defendant’s EOs. That is because failure to comply with EO 20-12 is punishable as a Class C misdemeanor under ORS 401.990. Plaintiffs do not want to expose themselves to criminal liability, nor do they want their students, or their students’ parents or guardians, to do so because since they could face a 30-day jail sentence and/or a fine of up to \$1,250.

89.

Plaintiffs believe the breadth of EO 20-03 and related EOs implementing it is no longer justified. Based on the last line of EO 20-12, however, Plaintiffs do not know how long it will be, if ever, until Defendant lets them resume freely exercising their constitutionally protected religious freedom rights. But in the meantime, based on no valid distinction, Defendant allows Oregon’s public universities to remain open. That is

unconstitutional.

90.

Defendant effectively declared a statewide catastrophic disaster on March 8, 2020. However broad, the emergency powers granted to Defendant cannot exceed the bounds of the Oregon or U.S. Constitutions.

91.

Plaintiffs respectfully request that the Court declare as follows:

1. EO 20-12 is also unconstitutional as it allows Defendant to impinge on Plaintiffs' constitutionally protected rights for as long as she wants.
2. Plaintiffs are free to resume operating their religious schools as they see fit.

**COUNT IX
(REQUEST FOR INJUNCTIVE RELIEF)**

92.

Plaintiffs incorporate all paragraphs above.

93.

ORS 28.080 states that "further relief based on a declaratory judgment may be granted whenever necessary or proper."

94.

Specifically, under EO 20-12, Plaintiffs have been irreparably harmed through being restricted in their freedoms of religion, as protected under Article 1, §§ 2 and 3 of the Oregon Constitution, and assembly, as protected under Article I, § 26 of the Oregon Constitution. Both rights are also protected under the U.S. Constitution's First Amendment.

95.

Plaintiffs will continue to be irreparably harmed every day that EO 20-12 and its progeny unlawfully remain in effect.

96.

Plaintiffs have no adequate remedy at law beyond injunctive relief prohibiting Defendant from enforcing EO 20-12 and any other EOs that may impinge on Plaintiffs' constitutionally protected freedoms.

97.

Based on the foregoing, the Court should grant Plaintiffs injunctive relief, starting with a temporary restraining order, which Plaintiffs request under FRCP 65, prohibiting Defendant from enforcing any of her EOs relating to the pandemic, and any later EO issued subsequently to, and seeking to implement, EO 20-03.

PRAYER

WHEREFORE, Plaintiffs pray for a judgment in their favor against Defendant and ask that the Court grant:

1. A temporary restraining order restraining Defendant from preventing or interfering with communal religious teaching and other activities at Plaintiffs' schools.
2. A preliminary injunction restraining Defendant from preventing or interfering with teaching and other communal religious activities at Plaintiffs' schools and the religious activities of Plaintiffs wherever they occur.
3. A permanent injunction restraining Defendant from preventing or interfering with communal religious activities at Plaintiffs' schools and the religious activities of

Plaintiffs wherever they occur.

4. A declaration that the EOs are illegal and unconstitutional facially and as applied to Plaintiffs;

5. An award of nominal and actual damages against Defendant.

6. An award of costs and reasonable attorneys' fees incurred in the prosecution of this action;

7. A declaration that Defendant was without the power or authority to issue the EOs as to plaintiffs.

8. A declaration that Defendant is without the power or authority to quarantine or isolate Plaintiffs, as well as all other religious schools in Oregon.

9. A temporary restraining order restraining Defendant from seeking to enforce the EOs against Plaintiffs.

10. A preliminary injunction further restraining Defendant from seeking to enforce the invalid EOs.

11. A permanent injunction restraining Defendant from seeking to enforce the invalid EOs against Plaintiffs.

12. An injunction enjoining enforcement statewide of all 2020 EOs relating to the pandemic as applied to private religious schools, and any and all related subsequent EOs.

13. Any other relief the Court deems just and proper.

VERIFICATION

I, John Kaempf, declare that I have personal knowledge of the factual matters set out in this Complaint and declare under penalty of perjury that the foregoing is true and correct.

DATED: August 10, 2020.

KAEMPF LAW FIRM PC

/s John Kaempf

John Kaempf, OSB #925391

john@kaempflawfirm.com

Attorney for Plaintiffs