

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

REV. STEVEN SOOS,
REV. NICHOLAS STAMOS,
DANIEL SCHONBRUN,
ELCHANAN PERR and
MAYER MAYFELD,

DECLARATION

20-CV-00651

Plaintiffs,

(GTS)(DJS)

-against-

ANDREW M. CUOMO, Governor of the State of New
York, in his official capacity,

LETITIA JAMES, Attorney General of the State of New
York in her official capacity,
and

BILL DE BLASIO, Mayor of the City of New York, in his
official capacity,

Defendants.

Adrienne J. Kerwin, on the date noted below and pursuant to § 1746 of title 28 of the
United States Code, declares the following to be true and correct under penalty of perjury under
the laws of the United States of America:

1. I am an Assistant Attorney General of counsel in this matter to Letitia James,
Attorney General of the State of New York, attorney for defendants Governor Andrew M. Cuomo
and Attorney General Letitia James (“State defendants”).

2. I submit this declaration on behalf of the State defendants in further opposition to plaintiffs' application for preliminary injunctive relief in the above-captioned action.

3. On June 11, 2020, plaintiffs filed an application for a temporary restraining order ("TRO"). Dkt. No. 7.

4. Following submissions on a very short schedule, the Court heard oral argument on that application on June 17, 2020. Dkt. at 6/17/2020.

5. During argument, the Court informed the parties that it intended to issue a ruling as to both the TRO and plaintiff's motion for a preliminary injunction by Friday, June 26, 2020. Because defendants Governor Andrew M. Cuomo and Attorney General Letitia James ("the State defendants") had not had sufficient opportunity to submit to the Court all information and argument relevant to plaintiffs' motion for a preliminary injunction — and, as a result, filed a submission in opposition to the TRO application only — in the time allotted, Dkt. Nos. 17, 18, 20, the Court granted all parties until June 22, 2020 to supplement the record.

6. Since the June 15, 2020 submission by the State Defendants, the following Executive Orders were issued:

Exhibit 41: Executive Order No. 202.41 ("EO 202.41");

Exhibit 42: Executive Order No. 202.42 ("EO 202.42");

Exhibit 43: Executive Order No. 202.43 ("EO 202.43");

7. EO 202.42 increased the gathering limitation in Phase 3 regions to 25 people. Exh. 42.

8. As of June 22, 2020, New York City has entered Phase 10. See <https://forward.ny.gov/reopening-new-york-city>

9. For the court's convenience, relevant decisions rendered after the State defendants' June 15, 2020 submissions include: Elim Romanian Pentecostal Church v. Pritzker, Case No. 20-1811, 2020 U.S. App. LEXIS 18862 (7th Cir. June 16, 2020) (challenging 10-person gathering limit); Spell v. Edwards, Case No. 20-30358, 2020 U.S. App. LEXIS 19148 (5th Cir June 18, 2020) (challenging 10-person limit on church services); High Plains Harvest Church v. Polis, Case No. 20-cv-01480, 2020 U.S. Dist. LEXIS 105247 (D. Colo. June 16, 2020) (finding that plaintiffs failed to offer evidence into the record sufficient to show that the protests were comparable to the religious services that plaintiffs wished to hold) ; McCarthy v. Cuomo, Case No. 20-cv-2124, 2020 U.S. Dist. LEXIS 107195 (E.D.N.Y. June 18, 2020) (EOs are content neutral and satisfy intermediate scrutiny).

10. As discussed in the State defendants' June 15, 2020 submissions, Dkt. Nos. 17, 18, 20, and those submitted herewith, the plaintiffs have failed to demonstrate that they are likely to succeed on the merits of their claims as to the indoor gathering limits applicable to the plaintiffs, and therefore any preliminary injunctive relief sought by the plaintiffs enjoining the enforcement of the indoor limitations should be denied.

11. Similarly, for the reasons discussed above, and in the State defendants' June 15, 2020 submissions incorporated herein, Dkt. Nos. 17, 18, 20, plaintiffs' application for temporary preliminary injunctive relief as to the applicable outdoor gathering limits should also be denied in its entirety.

WHEREFORE, for the reasons discussed in the June 15, 2020 submissions of the State defendants, and those discussed in the documents submitted herewith, the State defendants respectfully request that the court issue an order denying plaintiffs' application for temporary

preliminary injunctive relief in its entirety.

Dated: June 22, 2020
Wynantskill, New York

s/ Adrienne J. Kerwin

Adrienne J. Kerwin