

FILED

1:00p.m.

APR - 6 2020

VIRGINIA: IN THE CIRCUIT COURT OF RUSSELL COUNTY

LARRY HUGHES,
Complainant,

Kathy Huff D.
CLERK

v.

Civil Action No.:
CL20-415

RALPH S. NORTHAM,
Defendant.

Serve:

Mark Herring
Attorney General
900 East Main Street
Richmond, VA 23219

PETITION FOR DECLARATORY JUDGMENT

COMES now the undersigned, Larry Hughes, pursuant to Virginia Code 8.01-184, et seq., of the Code of Virginia and moves this Court for the entry of an order declaring that Executive Order 55, entered March 30, 2020, by Gov. Ralph S. Northam, as it relates to limiting religious services to no more than ten (10) persons, constitutes a violation of the Article 1, Section 1 of the Virginia Constitution guarantee of the enjoyment of life and liberty (facially and/or as applied); the Article 1, Section 2 of the Virginia Constitution guarantee that the people are the source of power in the Commonwealth (facially and/or as applied); the Article 1, Section 7 of the Virginia Constitution, guarantee that laws may not be suspended without consent of the representatives of the people (facially and/or as applied; and the Article 1, Section 16 of the Virginia Constitution guarantee of the free exercise of religion according to the dictates of individual conscience (facially and as applied). In support thereof, your Petitioner states as follows:

1. Your petitioner is a citizen of the Commonwealth of Virginia, residing at all relevant times in Russell County, Virginia.
2. Plaintiff is a professing Christian, and has regularly attended religious services for many years.
3. On March 23, 2020, Ralph S. Northam (“Northam”), as Governor of the Commonwealth of Virginia signed Executive Order 53 (“EO 53”). A copy of which is attached hereto and incorporated by reference herein marked as Exhibit 1.
4. On March 30, 2020, Northam signed Executive Order 55 (“EO 55”). A copy of which is attached hereto and incorporated by reference herein marked as Exhibit 2.
5. EO 55 (2) specifically prohibits public and private gatherings, including “religious” from being composed of more than ten (10) individuals. Consequently, religious gatherings are treated the same as sporting events, parties, etc.
6. At the same time, the ten (10) person limit does not apply to, inter alia, businesses not required to close to the public under EO 53.
7. EO 53 (5) lists various businesses deemed to be *essential*, including beer, wine and liquor stores, laundromats and dry cleaners, and even cash to pay-day shops, without limitations on employees or patrons.
8. EO 53 (8) also contemplates all other businesses remaining open, except those referenced in EO 53 (4), without limitation on employees or patrons if “social distancing” recommendations are observed
9. Interestingly, EO 53 and EO 55 clearly state neither are intended to limit access to elective health and medical services, or operations of the media (presumably

due to the protections afforded under constitutional law, including, but not limited to, Article 1, Section 12 of the Virginia).

10. EO 55 (2) has a chilling effect on Petitioner's right to religious freedom due to the ten (10) person limit, because he will not know the number of participants that may be at a service until he arrives. Even the pastor of a church may fear numerical non-compliance and simply close the doors to avoid turning out participants during service if the number suddenly exceeds the permissible limit.

11. EO 55, taken as a whole, and in relationship to EO 53, is not a "religiously neutral" law, and substantially interferes with the Petitioner's exercise of his Christian faith, and forces Petitioner to choose between fidelity to his religious belief and punishment, and thereby bringing unlawful coercion to bear on his choice.

12. EO 55, taken as a whole, and in relationship to EO 53, ignores the special status and protections afforded Virginians relative to their religious liberties recognized, and more clearly amplified than in the United States Constitution. Article 1, Section 16, of the Virginia Constitution clearly states that the way a person discharges their religion cannot be directed by force, nor shall he be restrained in his body.

13. Consequently, "reason and conviction" are the only permissible tools available to the Commonwealth to persuade citizens from attending church services. Whether a church should shut their doors under the current circumstances, is a matter which Article 1, Section 16, requires be left to the leadership and congregation of the church, not executive fiat.

14. Assuming the existence of a compelling state interest, the Commonwealth cannot establish the ten (10) person numerical limitation is the least restrictive when so

many other secular activities are permitted conditioned only on complying with social distancing guidelines.

16. A case and controversy exists as to the constitutionality of EO 55(2) as it relates to religious gatherings.

17. Easter Sunday falls on April 12, 2020, EO 55(2) will have a chilling effect on Petitioner's right to attend Easter services.

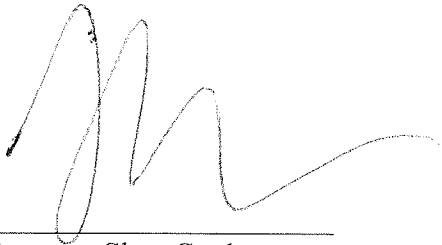
18. Given that the Petitioner is likely to prevail on the merits of his claim, and the importance of Easter within the Christian faith, it is requested that at the very least a temporary restraining order be issued until the merits of this case may be heard, or, alternatively, that April 12, 2020, be excused from enforcement.

WHEREFORE, the undersigned, Larry Hughes, pursuant to Virginia Code 8.01-184, et seq., of the code of Virginia, moves this Court for the entry of an order declaring that Executive Order 55, entered March 30, 2020, by Gov. Ralph S. Northam, as it relates to limiting religious services to no more than ten (10) constitutes a violation of Article 1, Section 1 of the Virginia Constitution guarantee of the enjoyment of life and liberty (facially and as applied); the Article 1, Section 2 of the Virginia Constitution guarantee that the people are the source of power in the Commonwealth (facially and as applied); the Article 1, Section 7 of the Virginia Constitution, guaranteeing that laws may not be suspended without consent of the representatives of the people; and the Article 1, Section 16 of the Virginia Constitution guarantee of the free exercise of religion according to the dictates of individual conscience (facially and as applied), and that the Commonwealth of Virginia be enjoined from enforcing the same.

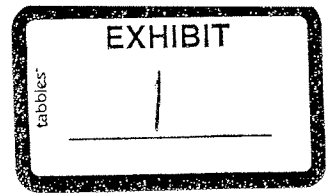
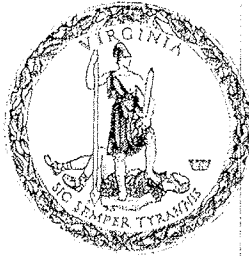
NOTICE OF HEARING

Please take notice that on the ____ of April, 2020, at ____, the undersigned will appear before the Russell County Circuit Court, in Lebanon, Virginia, and move for a temporary injunction as it relates to EO 55(2) prohibition of more than ten (10) persons at religious services. You are invited to attend.

LARRY HUGHES
By Counsel



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Commonwealth of Virginia
Office of the Governor

Executive Order

NUMBER FIFTY-THREE (2020)

TEMPORARY RESTRICTIONS ON RESTAURANTS, RECREATIONAL, ENTERTAINMENT, GATHERINGS, NON-ESSENTIAL RETAIL BUSINESSES, AND CLOSURE OF K-12 SCHOOLS DUE TO NOVEL CORONAVIRUS (COVID-19)

Importance of the Issue

The Commonwealth of Virginia continues to respond to the novel coronavirus (COVID-19) pandemic. On March 13, 2020, I ordered all K-12 schools in the Commonwealth closed for two weeks. On March 17, 2020, I, along with the Virginia State Health Commissioner, issued an Order of the Governor and State Health Commissioner Declaration of Public Health Emergency (later amended) limiting the number of patrons in restaurants, fitness centers, and theaters to no more than 10 per establishment. Despite these measures, COVID-19 presents an ongoing threat to our communities. Information from the Virginia Department of Health reveals occurrences of the virus in every region of the Commonwealth. Indeed, the data suggests that in several regions there may be community spread of the virus.

Now, we must take additional long term action to mitigate the impacts of this virus on our Commonwealth. Guidance on School Closures from the Centers for Disease Control and Prevention indicates that medium term closures (8-20 weeks) have greater impact on minimizing the spread of COVID-19 than shorter term closures (2-8 weeks). This guidance is consistent with the expertise of public health officials and their models of continuing spread of COVID-19 throughout the Commonwealth and the nation. Unnecessary person-to-person contact increases the risk of transmission and community spread. Consequently, we must limit such interactions to those necessary to access food and essential materials. Protecting the health and ensuring the safety of every Virginian is my highest priority.

Directive

Therefore, by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia, by § 44-146.17 of the *Code of Virginia* and in furtherance of Executive Order 51, I order the following:

1. Effective 11:59 p.m., Tuesday, March 24, 2020 until 11:59 p.m., Thursday, April 23, 2020, all public and private in person gatherings of 10 or more individuals are prohibited.
2. Cessation of all in-person instruction at K-12 schools, public and private, for the remainder of the 2019-2020 school year. Facilities providing child care services may remain open. On March 18, 2020, the Commissioner of the Virginia Department of Social Services, Duke Storen, issued a letter with guidance for daycare providers operating in the Commonwealth, including group size limits of 10 and stringent public health guidelines to prevent the spread of COVID-19. That guidance remains effective and I urge all Virginians with school-age children to review it. In addition, I urge child care providers to prioritize services for children of essential personnel, while asking all families with the ability to keep their children home, to do so. To that end, the Virginia Department of Social Services and the Virginia Department of Education will issue guidance to communities about operationalizing emergency child care services for essential personnel.
3. Closure of all dining and congregation areas in restaurants, dining establishments, food courts, breweries, microbreweries, distilleries, wineries, tasting rooms, and farmers markets effective 11:59 p.m., Tuesday, March 24, 2020 until 11:59 p.m., Thursday, April 23, 2020. Restaurants, dining establishments, food courts, breweries, microbreweries, distilleries, wineries, tasting rooms, and farmers markets may continue to offer delivery and take-out services.
4. Closure of all public access to recreational and entertainment businesses, effective 11:59 p.m., Tuesday, March 24, 2020 until 11:59 p.m., Thursday, April 23, 2020 as set forth below:
 - Theaters, performing arts centers, concert venues, museums, and other indoor entertainment centers;
 - Fitness centers, gymnasiums, recreation centers, indoor sports facilities, and indoor exercise facilities;
 - Beauty salons, barbershops, spas, massage parlors, tanning salons, tattoo shops, and any other location where personal care or personal grooming services are performed that would not allow compliance with social distancing guidelines to remain six feet apart;
 - Racetracks and historic horse racing facilities; and
 - Bowling alleys, skating rinks, arcades, amusement parks, trampoline parks, fairs, arts and craft facilities, aquariums, zoos, escape rooms, indoor shooting ranges, public and private social clubs, and all other places of indoor public amusement.

5. Essential retail businesses may remain open during their normal business hours. Such businesses are:
 - 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;
 - Medical, laboratory, and vision supply retailers;
 - Electronic retailers that sell or service cell phones, computers, tablets, and other communications technology;
 - Automotive parts, accessories, and tire retailers as well as automotive repair facilities;
 - Home improvement, hardware, building material, and building supply retailers;
 - Lawn and garden equipment retailers;
 - Beer, wine, and liquor stores;
 - Retail functions of gas stations and convenience stores;
 - Retail located within healthcare facilities;
 - Banks and other financial institutions with retail functions;
 - Pet and feed stores;
 - Printing and office supply stores; and
 - Laundromats and dry cleaners.
6. Effective 11:59 p.m., Tuesday, March 24, 2020 until 11:59 p.m., Thursday, April 23, 2020, any brick and mortar retail business not listed in paragraph 5 may continue to operate but must limit all in-person shopping to no more than 10 patrons per establishment. If any such business cannot adhere to the 10 patron limit with proper social distancing requirements, it must close.
7. All businesses shall, to the extent possible, adhere to social distancing recommendations, enhanced sanitizing practices on common surfaces, and other appropriate workplace guidance from state and federal authorities while in operation.
8. Although business operations offering professional rather than retail services may remain open, they should utilize teleworking as much as possible. Where telework is not feasible, such business must adhere to social distancing recommendations, enhanced sanitizing practices on common surfaces, and apply the relevant workplace guidance from state and federal authorities.
9. Nothing in the Order shall limit: (a) the provision of health care or medical services; (b) access to essential services for low-income residents, such as food

banks; (c) the operations of the media; (d) law enforcement agencies; or (e) the operation of government.

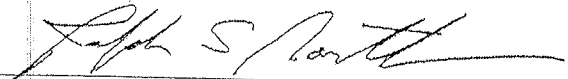
Violation of paragraphs 1, 3, 4, and 6 of this Order shall be a Class 1 misdemeanor pursuant to § 44-146.17 of the *Code of Virginia*.

Effective Date of this Executive Order

This Executive Order shall be effective March 23, 2020, amends Amended Order of the Governor and State Health Commissioner Declaration of Public Health Emergency, Order of Public Health Emergency One, and shall remain in full force and in effect until amended or rescinded by further executive order.

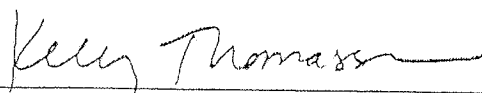
Given under my hand and under the Seal of the Commonwealth of Virginia, this 23rd day of March, 2020.



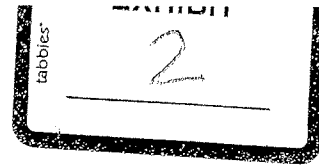
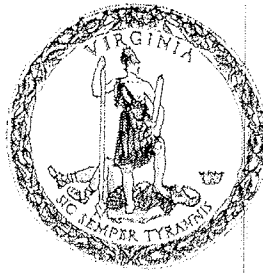


Ralph S. Northam, Governor

Attest:



Kelly Thomasson, Secretary of the Commonwealth



Commonwealth of Virginia
Office of the Governor

Executive Order

NUMBER FIFTY-FIVE (2020)

TEMPORARY STAY AT HOME ORDER DUE TO NOVEL CORONAVIRUS (COVID-19)

To reinforce the Commonwealth's response to COVID-19 and in furtherance of Executive Orders 51 (March 12, 2020) and 53 (March 23, 2020) and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia, by § 44-146.17 of the *Code of Virginia*, I order the following:

1. All individuals in Virginia shall remain at their place of residence, except as provided below by this Order and Executive Order 53. To the extent individuals use shared or outdoor spaces, whether on land or on water, they must at all times maintain social distancing of at least six feet from any other person, with the exception of family or household members or caretakers. Individuals may leave their residences for the purpose of:
 - a. Obtaining food, beverages, goods, or services as permitted in Executive Order 53;
 - b. Seeking medical attention, essential social services, governmental services, assistance from law enforcement, or emergency services;
 - c. Taking care of other individuals, animals, or visiting the home of a family member;
 - d. Traveling required by court order or to facilitate child custody, visitation, or child care;
 - e. Engaging in outdoor activity, including exercise, provided individuals comply with social distancing requirements;
 - f. Traveling to and from one's residence, place of worship, or work;

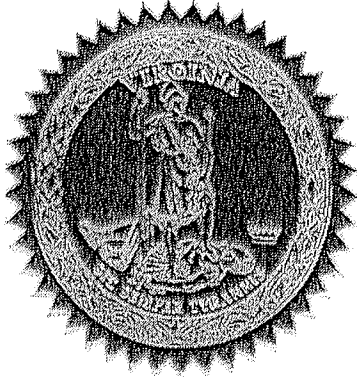
- g. Traveling to and from an educational institution;
 - h. Volunteering with organizations that provide charitable or social services; and
 - i. Leaving one's residence due to a reasonable fear for health or safety, at the direction of law enforcement, or at the direction of another government agency.
2. All public and private in-person gatherings of more than ten individuals are prohibited. This includes parties, celebrations, religious, or other social events, whether they occur indoor or outdoor. This restriction does not apply:
 - a. To the operation of businesses not required to close to the public under Executive Order 53; or
 - b. To the gathering of family members living in the same residence.
3. Institutions of higher education shall cease all in-person classes and instruction, and cancel all gatherings of more than ten individuals. For purposes of facilitating remote learning, performing critical research, or performing essential functions, institutions of higher education may continue to operate, provided that social distancing requirements are maintained.
4. Effective April 1, 2020 at 11:59 p.m., cessation of all reservations for overnight stays of less than 14 nights at all privately-owned campgrounds, as defined in § 35.1-1 of the *Code of Virginia*.
5. Closure of all public beaches as defined in § 10.1-705 of the *Code of Virginia* for all activity, except exercising and fishing. Social distancing requirements must be followed.
6. All relevant state agencies shall continue to work with all housing partners to execute strategies to protect the health, safety, and well-being of Virginians experiencing homelessness during this pandemic and to assist Virginians in avoiding evictions or foreclosures.
7. As provided in Executive Order 53, nothing in this Order shall limit: (a) the provision of health care or medical services; (b) access to essential services for low-income residents, such as food banks; (c) the operations of the media; (d) law enforcement agencies; or (e) the operation of government.

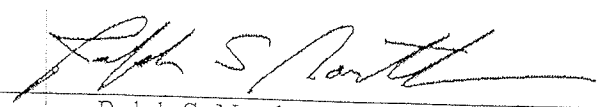
Violation of paragraphs 2, 3, 4, and 5 of this Order shall be a Class 1 misdemeanor pursuant to § 44-146.17 of the *Code of Virginia*.

Effective Date of this Executive Order

This Executive Order shall be effective March 30, 2020, amends Amended Order of the Governor and State Health Commissioner Declaration of Public Health Emergency, Order of Public Health Emergency One and Executive Order 53, and shall remain in full force and in effect until June 10, 2020, unless amended or rescinded by further executive order.

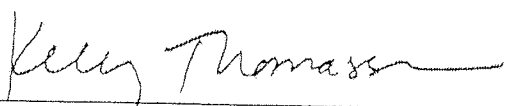
Given under my hand and under the Seal of the Commonwealth of Virginia, this 30th day of March, 2020.





Ralph S. Northam, Governor

Attest:



Kelly Thomasson, Secretary of the Commonwealth