

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
TWENTY-FIRST JUDICIAL CIRCUIT OF MISSOURI**

THE STATE OF MISSOURI ex rel. ERIC
S. SCHMITT,

Plaintiff,

v.

SAM PAGE, in his official capacity as St.
Louis County Executive;

FAISAL KHAN, in his official capacity as
Director of the St. Louis County
Department of Public Health; and

ST. LOUIS COUNTY DEPARTMENT OF
PUBLIC HEALTH,

Defendants.

No. _____

PETITION

NATURE OF THE ACTION

1. Missouri Attorney General Eric S. Schmitt brings this action to prevent unlawful, unconstitutional, arbitrary, capricious, and unreasonable conduct by the St. Louis County Executive, Sam Page; the Director of the St. Louis County Department of Public Health, Dr. Faisal Khan; and the St. Louis County Department of Public Health (“Defendants”). Throughout the current COVID-19 pandemic, Defendants have issued a series of stay-at-home orders (the “Safer at Home Orders”) that imposed significant restrictions on Missourian’s religious, economic, and personal freedoms. These Orders have been among the most aggressive and restrictive imposed by any county in the State of Missouri. Missourians have tolerated these restrictions to protect the lives and health of themselves, their loved ones, and their communities. But on April 9, 2021, all adult Missourians became vaccine-eligible and thus obtained a powerful tool for protecting themselves from the novel coronavirus. Yet as of April 9, 2021, Defendants showed little interest in making any meaningful moves to ease their restrictions on personal freedom.

2. On April 20, 2021, Plaintiff Attorney General Eric Schmitt wrote a letter to Dr. Faisal Khan, requesting an explanation for St. Louis County’s continuation of extremely restrictive conditions on the fundamental freedoms of St. Louis County residents. In response, Defendants failed to provide a meaningful explanation or justification for those restrictions. Instead, while facing potential litigation from the Missouri Attorney General’s Office for violating St. Louis County residents’ fundamental liberties, the Defendants hastily amended their Order to change some restrictions, expand others, and render them all less clear.

3. Instead of providing meaningful relief for St. Louis County residents, the new Order replaces prior restrictions with vague, confusing, and self-contradictory directives that continue to impose unjustified burdens on religious, economic, and personal freedom. The Order reflects arbitrary, capricious, and unreasonable government action by refusing to consider

important aspects of the problem and refusing to consider less restrictive alternatives that are reasonable under the circumstances. It refuses to provide any specific set of criteria for lifting coronavirus restrictions. The Defendants' latest Order is unlawful and reflects the continuation of a long process of unlawful conduct.

JURISDICTION AND VENUE

4. This Court has jurisdiction under Mo. Const. art V, § 14(a), § 536.150, RSMo, § 1.302, RSMo, § 527.010 et seq., RSMo, and other applicable law.

5. Venue is proper in this Court under § 508.060, RSMo.

PARTIES

6. Plaintiff State of Missouri is a sovereign State of the United States of America.

7. Eric S. Schmitt is the 43rd Attorney General of the State of Missouri. Attorney General Schmitt is authorized to “institute, in the name and on the behalf of the state, all civil suits and other proceedings at law or in equity requisite or necessary to protect the rights and interests of the state, and enforce any and all rights, interests or claims against any and all persons, firms or corporations in whatever court or jurisdiction such action may be necessary; and he may also appear and interplead, answer or defend, in any proceeding or tribunal in which the state’s interests are involved.” § 270.060, RSMo.

8. Attorney General Schmitt sues to vindicate Missouri’s sovereign interest in controlling the exercise of sovereign power over individuals and entities within its borders; Missouri’s sovereign interest in ensuring the enforcement of Missouri law within Missouri’s borders; Missouri’s quasi-sovereign and *parens patriae* interest in the freedom, health, and well-being, both physical, psychological, educational, and economic, of a significant segment of its populace, including but not limited to their rights to religious freedom.

9. Attorney General Schmitt sues to vindicate Missouri’s sovereign interest in ensuring that its municipal authorities do not exercise authority vested in them under state law in a fashion that violates the Missouri Constitution or Missouri law.

10. Dr. Sam Page (“Page”) is the County Executive of St. Louis County. He is sued in his official capacity.

11. Dr. Faisal Khan (“Khan”) is the Director of the St. Louis County Department of Public Health. He is a “local health authority” under Missouri Department of Health and Senior Services’ regulation 19 CSR 20-20.010(26). He is sued in his official capacity.

12. The St. Louis County Department of Public Health (“DPH”) is an agency of St. Louis County acting under the direction of Defendants Page and Khan. DPH constitutes a “local public health agency” under Missouri Department of Health and Senior Services’ regulation 19 CSR 20-20.010(27).

FACTUAL ALLEGATIONS

I. The U.S. Constitution and Missouri Law Impose Significant Limitations on the Authority of a County Health Officer to Impose COVID-19 Restrictions.

13. St. Louis County is a charter county of the State of Missouri. As of 2019, it had a population of almost one million people, making it the largest county by population in Missouri and encompassing almost one-sixth of the State’s population.

14. Missouri law confers significant authority on local health authorities, such as Khan, and local health agencies, such as DPH, to respond to outbreaks of communicable diseases, such as COVID-19. *See, e.g.*, § 192.020, RSMo; 19 CSR 20-20.040(2)(G).

15. That authority is not unlimited, however. It is subject to significant restrictions under Missouri law. A local health authority lacks authority to violate citizens’ constitutional rights. And, under Missouri law, a local health authority may not impose any restriction that is

“unconstitutional, unlawful, unreasonable, arbitrary, or capricious or involves an abuse of discretion.” § 536.150, RSMo.

16. During the COVID-19 pandemic, the U.S. Supreme Court has decided a series of cases addressing the right to free exercise of religion under COVID-19 restrictions. *See, e.g., Tandon v. Newsom*, No. 20A151, 2021 WL 1328507, at *1 (U.S. Apr. 9, 2021) (citing cases); *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67-68 (2020) (per curiam). Under these cases, “government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise.” *Tandon v. Newsom*, 141 S. Ct. 1294, 2021 WL 1328507, at *1. The Missouri Supreme Court and Missouri Court of Appeals treat such decisions as persuasive when interpreting Missouri’s laws of religious liberty.

17. There is a well-established body of case law addressing when government action is arbitrary, capricious, and unreasonable. Among other things, government action is arbitrary, capricious, and unreasonable when it is based on *post hoc* rationalization, when it fails to consider an important part of the problem it is addressing, and when it fails to consider less restrictive alternatives before infringing on citizens’ liberty.

18. A government agency must engage in “reasoned decisionmaking.” *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1905 (2020) (citation omitted). An agency’s action may not rely on “impermissible post hoc rationalizations” that the agency did not consider at the time it made its decision. *Id.* at 1909.

19. Furthermore, “[a]gency action is lawful only if it rests on a consideration of the relevant factors.” *Michigan v. EPA*, 135 S. Ct. 2699, 2706 (2015). Agency action that “failed to consider important aspects of the problem” is arbitrary, capricious, and irrational. *Regents of the*

Univ. of Calif., 140 S. Ct. at 1910 (citation omitted). “[A]n agency which completely fails to consider an important aspect or factor of the issue before it may also be found to have acted arbitrarily and capriciously.” *Barry Serv. Agency Co. v. Manning*, 891 S.W.2d 882, 892 (Mo. App. W.D. 1995) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

20. In addition, agencies must consider whether there are less restrictive policies that would achieve their goals. Agency action is arbitrary and capricious if it was issued “‘without any consideration whatsoever’ of a [more limited] policy.” *Regents of the Univ. of Calif.*, 140 S. Ct. at 1912 (quoting *State Farm Mut. Auto.*, 463 U.S. at 51).

21. Beginning in November 2020, the Defendants responded to COVID-19 in St. Louis County through a series of public health orders that they called “Safer at Home Orders.” The “Safer at Home Orders” imposed COVID-19-related restrictions on all residents of St. Louis County, Missouri.

22. The Safer at Home Orders also incorporated “Guidelines” for various aspects of personal, social, and economic life, which are posted on a website operated by DPH, stlcorona.com. Though the “Guidelines” are labeled as guidelines, under the Safer at Home Orders, most Guidelines were actually mandatory and binding on St. Louis County residents.

23. Between November 2020 and April 9, 2021, the Defendants issued six variations of their Safer at Home Order.

24. On March 18, 2021, Governor Parson announced that, on April 9, 2021, all adult Missourians over the age of 16 would be eligible for coronavirus vaccines. *See Governor Parson Announces Timeline for Activation of Phase 2 and 3 of Missouri’s COVID-19 Vaccination Plan*

(March 18, 2021), at <https://governor.mo.gov/press-releases/archive/governor-parson-announces-timeline-activation-phase-2-and-3-missouris-covid>.

25. On April 9, 2021, the U.S. Supreme Court issued its decision in *Tandon v. Newsom*, which granted an injunction pending appeal against California restrictions on in-person residential gatherings for religious purposes. *Tandon v. Newsom*, No. 20A151, 141 S. Ct. 1294, 2021 WL 1328507, at *1 (U.S. Apr. 9, 2021). *Tandon* reemphasized a series of U.S. Supreme Court cases that invalidated the application of COVID-19 restrictions to prevent the free exercise of religion. *See id.*; *see also, e.g., Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67-68 (2020) (per curiam).

26. The Defendants' restrictions on residential gatherings on April 9, 2021, were at least as restrictive as California's restrictions on residential gatherings that the Supreme Court barred from enforcement against religious activities in *Tandon*.

27. That same day, April 9, 2021—the day that all adult Missourians became vaccine-eligible, and the day the Supreme Court decided *Tandon*—Defendants published the sixth version of their Safer at Home Order, the “Fifth Amended Safer at Home Order.” See St. Louis County Department of Public Health, Fifth Amended Safer at Home Order (Apr. 9, 2021), attached hereto and incorporated by reference as Exhibit A (“Fifth Amended Safer at Home Order”).

28. The Fifth Amended Safer at Home Order made only modest and cosmetic changes on restrictions already in place under the prior Safer at Home Orders. For example, in their press release issued on April 9, 2021, the Defendants emphasized that the Fifth Amended Safer at Home Order made two changes: (1) eliminating the midnight curfew for bars, restaurants, and casinos; and (2) permitting arcade games to be played in bowling alleys, movie theaters, and arcades, but only if masks are worn and food is not eaten in the arcade area. *See St. Louis County Eliminates*

Business Curfews, Allows Arcade Games to Be Played in Latest Set of Amended Public Health Protocols (Apr. 9, 2021), at <https://stlouiscountymo.gov/test/county-executive1/county-executive-press-releases/st-louis-county-eliminates-business-curfews-allows-arcade-games-to-be-played-in-latest-set-of-amended-public-health-protocols/>.

29. By comparison, the Fifth Amended Safer at Home Order left in place a broad array of restrictions on personal, religious, educational, recreational, athletic, and economic freedom for residents of St. Louis County, Missouri. *See* Ex. A.

30. The leading restriction in the Fifth Amended Safer at Home Order, Section III.A, provided that “You must not leave or be outside of your Residence except for specific purposes.” Ex. A, at 2. It enumerated nine government-approved purposes for which St. Louis County residents could leave their homes. *Id.* at 2-3 (§ III.A.1-9). Leaving home for any other purpose not approved by Defendants remained forbidden in St. Louis County.

31. The Fifth Amended Safer at Home Order continued to impose serious restrictions on the free exercise of religion in St. Louis County.

32. As noted above, Section III.A.1-9 of the Fifth Amended Safer at Home Order provided a list of nine enumerated, government-approved purposes for which St. Louis County residents may leave their homes. Section III.A.8 provided that “[a] person may be outside their residence to attend a place of worship, a funeral or a related event for someone who has died, or to visit a burial ground or to get married.” Ex. A, at 3.

33. No other religious purpose for leaving one’s residence was listed among the government-approved purposes for leaving one’s residence in the Fifth Amended Safer at Home Order. Thus, leaving home for the purpose of engaging in any religious activity *outside* a place of worship—such as outdoor prayer, engaging with others about one’s faith, meeting in small faith

groups, Bible studies, and public proselytizing—was prohibited in St. Louis County under Section III.A of the Fifth Amended Safer at Home Order. So, too, were many traditional religious practices that occur outside the home and outside a place of worship—such as the Tashlich ritual, Sukkot observances, and the celebration of Eid Al-Fitr.

34. Even if religious gatherings outside a place of worship were permitted under Section III.A, other provisions of the Fifth Amended Safer at Home Order imposed residential gathering restrictions that apply to in-home religious services and that are at least as restrictive as those enjoined by the U.S. Supreme Court in *Tandon v. Newsom*, 141 S. Ct. 1294 (Apr. 9, 2021).

35. Further, the Fifth Amended Safer at Home Order discriminated against the free exercise of religion in places of worship by imposing building-capacity restrictions on places of worship that were more restrictive than those imposed on comparable secular activities. Section IV.a of the Fifth Amended Safer at Home Order defined “Business” to include churches, synagogues, mosques, and other places of worship. Thus, a church, synagogue, or mosque that provides religious services to the public was subject to a building-capacity limitation. *Id.*

36. But the Fifth Amended Safer at Home Order exempted many non-religious “Businesses” from the 50-percent-capacity restriction. Section III.D.5 exempted hospitals, public transit, airports, urgent care centers, medical offices, shelters, daycare facilities, schools, polling places, and professional businesses that do not engage in direct interactions with the public, from the 50-percent-capacity rule. Ex. A, at 5 (§ III.D.5.a-i). These exempted entities provide comparable secular activities that St. Louis County treated more favorably than religious activities.

37. In addition to restricting religious freedom, the Fifth Amended Safer at Home Order also imposed numerous restrictions on virtually every aspect of personal, social, economic, educational, recreational, athletic, and other human activity.

38. Among other things, the Fifth Amended Safer at Home Order drastically restricted freedom of association, even if the participants were fully vaccinated and even if they observed precautions like mask-wearing, hand hygiene, and social distancing. Section III.B of the Order provides that “You must not leave or be outside your Residence for [1] The purpose of meeting people socially who are not members of your household or in your Support Bubble,” or [2] “The purpose of meeting socially indoors with family or friends unless they are part of your household or Support Bubble.” Ex. A, at 3. Making new friends and socializing with old friends—unless they were within your 10-person “Support Bubble”—were prohibited in St. Louis County.

39. The Fifth Amended Safer at Home Order also indicated that numerous “Guidelines” promulgated by St. Louis County had the binding effect of law in St. Louis County. *See* Ex. A, §§ III.D.1.b, III.D.2.d, III.D.3.d, III.D.4, III.D.6 (incorporating certain Guidelines); *see also id.* § V.1 (continuing “any general and business-specific operating standards, guidelines, and/or protocols” authorized by past orders); *id.* § V.2 (noting that “additional precautions and guidelines” that are “required by general and business-specific operating standards, guidelines and protocols published by DPH,” are available on stlcorona.com).

40. The Guidelines incorporated into the Fifth Amended Safer at Home Order included 25 highly detailed “Guidelines” documents posted on stlcorona.com, which regulated virtually every aspect of personal, social, economic, educational, recreational, athletic, and other human activity.

41. The Guidelines required the government’s pre-approval before St. Louis County residents could conduct deeply significant, highly personal activities such as weddings, funerals, anniversary celebrations, and other activities. St. Louis County’s “Event Planning Guidelines” required persons planning to host such events to fill out a 23-question questionnaire and submit

the plan for approval to DPH before hosting any such event, and it describes those 23 questions as “the minimum starting point” for the event approval process.

42. The Guidelines included a long series of additional, detailed restrictions on religious, economic, and personal activity of every kind.

43. On April 20, 2021, Attorney General Schmitt sent a letter to Defendant Khan, raising concerns about many of the restrictions in the Fifth Amended Safer at Home Order and associated Guidelines. *See* April 20, 2021 Letter of Attorney General Schmitt (attached as Exhibit B, and incorporated by reference herein).

44. Attorney General Schmitt’s letter reminded Dr. Khan that the Defendants’ authority to impose restrictions is limited by the Constitution and Missouri law, which prohibits behavior that is “unconstitutional, unlawful, unreasonable, arbitrary, or capricious or involves an abuse of discretion.” Ex. C, at 2 (citing § 536.150, RSMo). That standard requires the agency to engage in “reasoned decisionmaking,” and prohibits “*post hoc* rationalizations” for agency action. *Id.* (citing cases). The Attorney General also advised Dr. Khan that “agency action is lawful only if it rests on the consideration of relevant factors,” and that agency action that “failed to consider important aspects of the problem” is unlawful. *Id.* Likewise, the Attorney General reminded Dr. Khan that agency action is unlawful if it was issued “without any consideration . . . of a more limited policy.” *Id.*

45. The Attorney General’s letter then raised six concerns about St. Louis County’s Fifth Amended Safer at Home Order and the associated binding Guidelines: (1) its restrictions on religious freedom; (2) the psychological impact of lockdowns, especially on troubled youth; (3) the economic impact of lockdowns, especially on low-income workers and small businesses; (4) the educational impact of restrictions on elementary and high-school students, especially low-

income students and those with special needs; (5) the fact that the Fifth Amended Safer at Home Order and Guidelines contain no clear criteria for lifting restrictions and terminating limitations on personal freedom; and (6) the inclusion of a long series of individual restrictions that warrant particular justification. Ex. B, at 3-9.

46. With respect to the restrictions on religious freedom, the Attorney General noted that the Fifth Amended Safer at Home Order “appear to impose restrictions on residential gatherings that are at least as restrictive as the California restrictions that the Supreme Court enjoined in *Tandon v. Newsom*,” and that its “restrictions on in-home religious exercise appear to be more onerous than California’s unconstitutional restrictions.” Ex. C, at 3. The Attorney General requested that Dr. Khan identify every step Defendants have taken to ensure that the Fifth Amended Safer at Home Order and Guidelines impose the least possible restriction on religious freedom, and identify every less restrictive alternative considered in crafting the restrictions. *Id.*

47. With respect to the psychological impact of lockdowns, the Attorney General cited a series of studies addressing the adverse impact of social isolation on mental health, especially in younger persons, and noted research indicating increased risk of youth suicide resulting from social isolation. Ex. C, at 3-4. The Attorney General requested that Dr. Khan identify what studies, experts, research, or other sources he relied on in considering this important aspect of the problem, and what less restrictive alternatives he considered, in crafting the Fifth Amended Safer at Home Order and Guidelines. *Id.*

48. With respect to the economic impact of restrictions, the Attorney General cited extensive research about the negative economic effects of lockdowns, noting that “the financial devastation from economic restrictions has had a grossly disproportionate impact on minorities, working-class families, and the poor.” Ex. C, at 4-5. The Attorney General requested that Dr.

Khan identify what studies, experts, research, or other sources he relied on in considering this important aspect of the problem, and what less restrictive alternatives he considered, in crafting the Fifth Amended Safer at Home Order and Guidelines. *Id.*

49. With respect to the educational impact of restrictions on elementary and secondary students, the Attorney General cited studies that “demonstrate[] a disturbing association between remote learning and other restrictions on schools, and negative educational outcomes for students.” Ex. C, at 6. He cited research indicating that “the risk of such negative outcomes are heightened for children who are lower income and who come from less stable family situations.” *Id.* And he cited studies showing that “educational restrictions and remote learning impose perhaps the greatest disadvantages on students with disabilities and special needs.” *Id.* The Attorney General requested that Dr. Khan identify what studies, experts, research, or other sources he relied on in considering this important aspect of the problem, and what less restrictive alternatives he considered, in crafting the Fifth Amended Safer at Home Order and Guidelines. *Id.*

50. The Attorney General also cited reports indicating that “[c]losed schools and remote learning ... are linked with the under-reporting of child abuse, neglect, and child sexual abuse,” resulting in such crimes continuing undetected during school restrictions. Ex. C, at 6. The Attorney General requested that Dr. Khan identify what studies, experts, research, or other sources he relied on in considering this important aspect of the problem, and what less restrictive alternatives he considered, in crafting the Fifth Amended Safer at Home Order and Guidelines. *Id.*

51. The Attorney General noted that “all adult Missourians became vaccine-eligible on April 9, 2021, and thus all adult Missourians now have a powerful tool to protect themselves from infection if they so desire.” Ex. C, at 7. The Attorney General noted that, notwithstanding universal vaccine-eligibility, the Fifth Amended Safer at Home Order “continues to impose

extraordinary intrusions into the private, daily, and personal lives of Missourians.” *Id.* The Attorney General noted that he was “unable to locate any sunset date or any other identified criteria for lifting restrictions on personal, religious, and economic freedom in St. Louis County in the Fifth Amended Safer at Home Order ... or the Guidelines.” *Id.* The Attorney General requested that Dr. Khan articulate his criteria, if any exist, for lifting restrictions on personal, religious, and economic activity in St. Louis County. *Id.* at 8.

52. Finally, the Attorney General’s letter identified 26 individual restrictions imposed by the Guidelines on various aspects of personal, economic, recreational, athletic, and social life. Ex. C, at 8-10. The Attorney General requested that Dr. Khan identify the sources and experts that Defendants relied on in crafting such restrictions, and to identify the less restrictive alternatives, if any, that Defendants considered before imposing them. *Id.* at 8.

53. On April 27, 2021, County Counselor Beth Orwick responded to Attorney General Schmitt’s letter on behalf of Defendants. See April 27, 2021 Letter of Beth Orwick (attached as Exhibit C).

54. Ms. Orwick’s letter provided information related to the health risks of COVID-19, but it provided very little information responsive to the Attorney General’s specific requests. Ex. C.

55. Ms. Orwick’s letter did not provide any information in response to the Attorney General’s concerns about Defendants’ restrictions on religious liberty. Ex. C.

56. Ms. Orwick’s letter did not identify any studies, experts, or other sources that the Defendants relied upon to consider their restrictions’ impact on mental and psychological health of Missouri residents. Ex. C.

57. Ms. Orwick's letter did not identify any less restrictive alternatives that Defendants considered to reduce the impact of their restrictions on mental health. Ex. C.

58. Ms. Orwick's letter did not identify studies, experts, or other sources that the Defendants relied upon to consider their restrictions' impact on the economic well-being of St. Louis County residents, especially the poor, low-income families and residents most heavily impacted by the County's restrictions. Ex. C.

59. Ms. Orwick's letter did not identify any less restrictive alternatives that Defendants considered to reduce the economic impact of Defendants' restrictions on poor, low-income, and working families in St. Louis County. Ex. C.

60. Ms. Orwick's letter did not identify any studies, experts, or other sources that the Defendants relied upon to consider their restrictions' impact on educational outcomes for elementary and secondary students, especially students from low-income and less stable family backgrounds, and those with disabilities and special needs. Ex. C.

61. Ms. Orwick's letter did not identify any less restrictive alternatives that Defendants considered to reduce the impact of their educational restrictions on such students. Ex. C.

62. Ms. Orwick's letter did not identify any studies, experts, or other sources that the Defendants relied upon to consider their restrictions' impact on the reporting rates for child abuse and neglect. Ex. C.

63. Ms. Orwick's letter did not identify any less restrictive alternatives that Defendants considered to reduce the impact of their restrictions on the reporting rates for child abuse and neglect. Ex. C.

64. Ms. Orwick's letter did not identify any specific criteria that Defendants have formulated for lifting restrictions in St. Louis County. Ex. C.

65. On information and belief, Defendants simply did not meaningfully consider these various important aspects of the problem in formulating the Fifth Amended Safer at Home Order, its predecessor Safer at Home Orders, and their subsequent Order.

66. On Monday, May 3, 2021, while facing potential litigation from the Missouri Attorney General’s Office, Defendants rescinded their Fifth Amended Safer at Home Order and replaced it with a new Order, styled “St. Louis County Department of Public Health 2019 Novel Coronavirus (“COVID-19”) Reopen STL Order” (hereinafter, the “Reopen STL Order” or “Order”) (attached as Exhibit D and incorporated by reference herein).

67. The “Reopen STL Order” appears to have been hastily prepared, because it contains grammatical errors and provisions that are both vague and self-contradictory. *Id.*

68. The “Reopen STL Order” rescinds some of the objectionable features of the Fifth Amended Safer at Home Order, which Attorney General Schmitt addressed in his April 20 letter, such as the limitations on the purposes for which St. Louis County residents may leave home. But it continues to impose significant restrictions on personal and religious freedoms, and it contains many provisions that are arbitrary, capricious, unreasonable, vague, and self-contradictory. See Ex. D.

69. For example, Section I of the Reopen STL Order imposes an outdoor mask mandate for all events and activities involving groups of people of any size, regardless of the nature of the meeting and whether distancing will be observed. See Ex. D, at 2 (“[O]utdoor events and activities, *despite the number of attendees*, must require social distancing *and* face coverings...”) (emphasis added). This provision stands in contrast to policies in other counties in Missouri, which have rescinded such outdoor mask mandates.

70. This provision contradicts St. Louis County’s own guidance, provided on the same page of the Reopen STL Order, which states that “[v]iral particles disperse more quickly outdoors,” and that “[i]t is in indoor environments where these viral particles are more of a risk of transmitted [*sic*] the virus because they do not disperse as quickly with the more static indoor air.” *Id.* at 2. And it states that “If outdoors, you need to be distanced or masked,” *id.* at 2—one paragraph before requiring, for all outdoor events and activities, that St. Louis County residents “must require social distancing and face coverings.” *Id.* at 2 (emphases added).

71. The “Reopen STL Order” imposes additional severe restrictions on the freedom of association. For example, Section I of the Order states that “Events of less than 500 persons should follow the Event Planning Guidelines, while events of more than 500 persons should submit a plan for approval” before holding the event. *Id.* at 2. Likewise, the Order’s “Policy” section states that “[o]utdoor events where the number of individuals in attendance will exceed 500 persons, must submit a plan for approval by DPH in accordance with paragraph D of Section 2,” which appears to refer to Section III.2.D. By contrast, under Section III.2.B, “Outdoor events of less than 500 persons must comply with DPH’s Event Planning Guidelines and comply with any request for information by DPH regarding adherence to those Event Planning Guidelines.” *Id.* at 2. These provisions appear to imply that County pre-approval is only required for events and activities that exceed 500 persons, while events of less than 500 persons must only comply with the “Event Planning Guidelines.”

72. But, as noted above, DPH’s Event Planning Guidelines require *pre-approval by the County* for all events to which they apply. See Event Planning Guidelines, at <https://stlcorona.com/sites/default/assets/pdfs/news-updates/event-planning-guidelines-2021-03-24.pdf> (attached as Exhibit E and incorporated by reference herein). The Event Planning

Guidelines provide a detailed, highly intrusive list of 23 questions to answer for each private event planned. Ex. E, at 1-2. The Event Planning Guidelines require St. Louis County residents to **“Provide detailed answers to the questions below”**; they require “All event plans should be submitted to [DPH],” and they provide that “DPH staff will work with the event coordinator to finalize the plan.” *Id.* at 1 (bold in original). Thus, *all* private events—regardless of size, number of attendees, venue, or risk, and including religious activities—remain subject to government pre-approval under the so-called “Reopen STL Order.”

73. Moreover, to the extent that Defendants intended to permit smaller events to proceed without government pre-approval, the Order is, at best, vague, ambiguous, and self-contradictory, such that persons of ordinary intelligence must guess at its meaning.

74. The “Reopen STL Order” continues to impose significant additional restrictions on religious freedom, as well.

75. The Order defines churches, synagogues, and other places of worship as “Businesses.” *See* Ex. D, at 6, Section IV.1 (specifically including “religious institutions and places of worship” in the definition of “Business”).

76. Section III.2.D provides that all Businesses must submit a plan for pre-approval for “all events where large numbers of individuals are invited or attend.” Ex. D, at 4. The phrase “large numbers of individuals” is not defined and is so vague that persons of ordinary intelligence must guess at its meaning. All such Businesses “are required to submit a plan for approval” for “all events where large numbers of individuals are invited or attend,” and “all plans not expressly approved will be deemed denied.” *Id.* This provision, on its face, requires government pre-approval of all worship services and other religious activities involving “large numbers of people.” It is both vague and highly restrictive of religious activity.

77. Furthermore, because they are defined as “Businesses,” churches and places of worship remain subject to business-capacity restrictions. Section I of the Order provides that Businesses’ “capacity continues to be limited by the requirement of social distancing.” Ex. D, at 2. Section III.2.A provides that all Businesses “must limit capacity based on Social Distancing Requirements to no more than the number of individuals who can remain socially distanced in that space, whether it is an indoor or outdoor space.” *Id.* at 3. This is a modified version of the business-capacity restrictions imposed by the Fifth Amended Safer at Home Order.

78. But, as noted above, Section III.D.5 of the Fifth Amended Safer at Home Order exempted nine classes of non-religious “Businesses” from such capacity restrictions—including hospitals, public transit, airports, urgent care centers, medical offices, shelters, daycare facilities, schools, polling places, and professional businesses that do not engage in direct interactions with the public. See Ex. A, at 5. The Reopen STL Order does not appear to rescind the exemption for those nine categories of businesses from the Defendants’ business-capacity restrictions. See Ex. D. Indeed, the Reopen STL Order does not directly address this preexisting exemption. *Id.* The Reopen STL Order thus may provide more favorable treatment to secular businesses than to comparable religious activities, which constitutes unlawful discrimination against religious activity.

79. In the alternative, if Defendants interpret their Order otherwise, then the Reopen STL Order is vague on this point, in that persons of ordinary intelligence must guess at its meaning as to whether it continues these exemptions for preferred secular Businesses from its capacity restrictions.

80. The Order also continues to impose significant restrictions on educational activity without substantial justification.

81. For example, the Order continues to impose a mask mandate on all grade levels of K-12 education, with very limited exceptions. Section III.E.1c provides that “Face Coverings must be worn indoors at all times, by Fully Vaccinated and unvaccinated persons when they are ... [a] students [*sic*] attending a K-12 educational institution, whether public or private, with the allowances provided in Paragraph H(4) [*sic*] of this Section III.” Ex. D, at 4. Section III.H(4) of the Order does not exist, but the Order appears to be referring to Section III.E.4, which provides that “Students attending grades K-12 may be allowed to remove their Face Covering in the following situations: a. While at recess or in physical education class, as long as students are at least 6 feet apart; b. While consuming food or drink as long as students are six feet apart; and [*sic*] c. While participating in band, choir, or music class, as long as students are 6 feet apart; d. In accordance with DPH’s Youth Sport Guidelines while participating in a school sponsored sport.” *Id.* at 5. In all other circumstances, children from kindergarten to senior year of high school, ages 5-18, must wear masks at all times in school. *Id.*

82. To continue this sweeping mask mandate for K-12 educational activities is arbitrary, capricious, irrational, and unlawful, in light of the universal availability of vaccines for educational staff, the adverse impact on education, and the low risk of transmission in educational settings.

83. In relation to the restrictions discussed herein, Defendants’ actions have long been and continue to be outliers among the counties in Missouri. Defendants’ restrictions on religious, economic, and personal freedom have been significantly more restrictive than restrictions in counties of comparable population in Missouri.

84. Further, on information and belief, Defendants have exacerbated the unlawful, unconstitutional, unreasonable, arbitrary, and capricious nature of their restrictions by engaging in

enforcement patterns and practices that are also arbitrary, unreasonable, capricious, unlawful, and/or unconstitutional.

85. On information and belief, all Defendants acted in concert with respect to all factual allegations herein. On information and belief, Page and Khan acted in concert with each other, and DPH acted under the direction and control of Page and Khan.

86. Defendants' actions, as alleged herein, inflict irreparable injury on the citizens and residents of St. Louis County. The loss of fundamental freedoms, even for a limited time, constitutes *per se* irreparable injury.

87. By contrast, requiring Defendants to comply with the Missouri Constitution and Missouri law in their promulgation of coronavirus restrictions will impose no cognizable injury on Defendants.

88. The public interest overwhelmingly favors requiring Defendants to comply with the Missouri Constitution and Missouri law.

COUNT ONE – Religious Freedom Restoration Act – Pre-Approval of Religious Activities

89. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

90. As alleged herein, through their “Reopen STL Order,” Defendants impose a requirement of government pre-approval of religious activities, including activities both inside and outside places of worship, without adequate justification.

91. Moreover, on information and belief, the manner in which Defendants have granted and denied government pre-approval of activities during the pandemic has been, and continues to be, arbitrary, capricious, and unreasonable.

92. Further, approval requires that St. Louis County make an individualized determination based upon information specific to the event or gathering. That includes reserving the ability to modify the plans.

93. Thus, the Reopen STL Order is not “a rule of general applicability” that “does not discriminate against religion, or among religions” § 1.302.1(1), RSMo. It instead requires individualized determinations that require drawing arbitrary lines between secular and religious activity and among different religious activities.

94. Furthermore, Defendants cannot show that approval process “is essential to further a compelling governmental interest, and is not unduly restrictive considering the relevant circumstances.” § 1.032.1(2), RSMo. Rather, Defendants fail to point to a reason—much less compelling ones—why they should have power to differentiate between religious and non-religious, as well as among religious, gatherings. Nor have Defendants shown that this restriction is appropriate; indeed, they failed to show any awareness of possible, less-restrictive alternatives.

COUNT TWO – Religious Freedom Restoration Act – Restrictions on Places of Worship

95. Plaintiff incorporates by reference the allegations of the preceding paragraphs.

96. In their “Reopen STL Order,” Defendants continue to impose capacity restrictions and masking requirements on places of worship, such as churches, synagogues, mosques, temples, and other places of worship. These capacity restrictions limit attendance at places of worship to six-foot social distancing requirements.

97. Those limits restrict religious exercise. They limit the ability of people to engage in communion and fellowship at religious gatherings. Indeed, in some instances, they may severely restrict who may be present at a religious gathering.

98. On information and belief, certain secular entities are not subject to those requirements by virtue of discriminatory enforcement—a reflection of exemptions they had under the Fifth Amended Order. Thus, these restrictions are not rules “of general applicability” and do “discriminate against religion” in violation of § 1.302.1(1), RSMo.

99. Furthermore, Defendants have not, and cannot, show that those restrictions “[are] essential to further a compelling governmental interest, and [are] not unduly restrictive considering the relevant circumstances.” § 1.032.1(2), RSMo.

COUNT THREE – Missouri Constitution – Freedom of Association

100. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

101. Article I, §§ 8 and 9 of the Missouri Constitution protect the freedom of association of all Missourians.

102. As alleged above, Defendants’ Reopen STL Order imposes severe restrictions on the freedom of association of St. Louis County residents. Among other ways, it imposes broad requirements of government pre-approval of all manner of private meetings, events, and gatherings throughout St. Louis County.

103. Under the terms of the Order and the Event Planning Guidelines, St. Louis County residents must seek pre-approval and submit to a detailed and intrusive government examination before hosting any event, gathering, or meeting of private purposes.

104. This includes restrictions on events for virtually any purpose, whether personal, religious, political, social, recreational, or otherwise.

105. Defendants lack adequate justification for their sweeping restrictions on private events, gatherings, and meetings in St. Louis County. These restrictions violate the right to freedom of association guaranteed in the Missouri Constitution.

COUNT FOUR – Void for Vagueness

106. In the alternative to Counts One to Three, the Reopen STL Order violates the Due Process Clause and is void for vagueness, because persons of ordinary intelligence must guess at its meaning on many important questions.

107. The Missouri Constitution prohibits government restrictions that are unconstitutionally vague. “The test in enforcing the doctrine is whether the language conveys to a person of ordinary intelligence a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices.” *Feldhaus v. State*, 311 S.W.3d 802, 806 (Mo. 2010)

108. The Order is vague and self-contradictory on many points, including but not limited to the following:

- a. Whether private events, gatherings, and activities that involve less than 500 people must obtain pre-approval from Defendants before the event may be hosted;
- b. Whether all outdoor events and activities, regardless of the number of people involved, must require masks and social distancing as stated in Section I of the Order;
- c. What is the meaning of “large numbers of individuals” under Section III.2.D; and
- d. Whether the business capacity restrictions now apply to the nine classes of entities exempted from the capacity restrictions in the Fifth Amended Safer at Home Order.

109. The Order fails to provide persons of ordinary intelligence a sufficiently definite warning as to the proscribed conduct on these and other points as alleged herein, and thus it is void for vagueness.

COUNT FIVE– Arbitrary, Capricious, and Unreasonable Action – Failure to Consider Important Aspects of the Problem

110. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

111. Missouri law requires that Defendants’ actions in imposing COVID-19-related restrictions must not be arbitrary, capricious, unreasonable, unconstitutional, or unlawful. § 536.160, RSMo.

112. As alleged herein, Defendants’ restrictions as set forth in the Reopen STL Order, the Fifth Amended Safer at Home Order, the prior Safer at Home Orders, and the binding Guidelines have been and continue to be arbitrary, capricious, unreasonable, unlawful, and unconstitutional.

113. Among other things, on information and belief, Defendants have repeatedly failed to consider important aspects of the problems addressed by their coronavirus restrictions, including but not limited to failing to give meaningful consideration to their impact on religious freedom; the impact of social isolation of Missourians’ mental health; the impact of educational restrictions on educational outcomes for all students, especially poor, minority, disadvantaged, and disabled students; and the impact of restrictions on the reporting rates for instances of child abuse, neglect, and sexual abuse. In doing so, Defendants’ actions have been arbitrary, capricious, and unreasonable.

114. On information and belief, this arbitrary, capricious, and unreasonable conduct continues in the adoption and implementation of Defendants’ latest shutdown Order, the “Reopen STL Order.” In formulating this Order, on information and belief, Defendants acted arbitrarily, capriciously, and unreasonably by failing to adequately consider important aspects of the problems addressed by the Order.

COUNT SIX – Arbitrary, Capricious, and Unreasonable Action – Failure to Consider Less Restrictive Alternatives

115. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

116. Missouri law requires that Defendants’ actions in imposing COVID-19-related restrictions must not be arbitrary, capricious, unreasonable, unconstitutional, or unlawful. § 536.160, RSMo.

117. As alleged herein, Defendants’ restrictions as set forth in the Reopen STL Order, the Fifth Amended Safer at Home Order, the prior Safer at Home Orders, and the binding Guidelines have been and continue to be arbitrary, capricious, unreasonable, unlawful, and unconstitutional.

118. Among other things, on information and belief, Defendants have repeatedly failed to consider less restrictive alternatives that would lessen the impact of their restrictions on Missourians with respect to the adverse effects alleged herein—including but not limited to adverse effects on Missourians’ religious freedom, mental health, economic well-being, educational opportunities, under-reporting of child abuse and neglect, and other issues. In doing so, Defendants’ actions have been arbitrary, capricious, and unreasonable.

119. On information and belief, this arbitrary, capricious, and unreasonable conduct continues in the adoption and implementation of Defendants’ latest shutdown Order, the “Reopen STL Order.” In formulating this Order, on information and belief, Defendants acted arbitrarily, capriciously, and unreasonably by failing to adequately consider less restrictive alternatives.

**COUNT SEVEN – Arbitrary, Capricious, and Unreasonable Action – Failure to Provide
Criteria for Lifting Restrictions**

120. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

121. Missouri law requires that Defendants’ actions in imposing COVID-19-related restrictions must not be arbitrary, capricious, unreasonable, unconstitutional, or unlawful. § 536.160, RSMo.

122. As alleged herein, Defendants’ restrictions as set forth in the Reopen STL Order, the Fifth Amended Safer at Home Order, the prior Safer at Home Orders, and the binding Guidelines have been and continue to be arbitrary, capricious, unreasonable, unlawful, and unconstitutional.

123. Defendants have failed to formulate or promulgate any set of specific criteria for ending their restrictions, resulting in restrictions that are apparently limitless in time and scope. This conduct is also arbitrary, capricious, and unreasonable.

124. This arbitrary, capricious, and unreasonable process has resulted in substantive restrictions that remain among the most onerous in Missouri and that lack a sound foundation in policy, including but not limited to the outdoor mask mandate, the restrictions on religious freedom, the restrictions on freedom of association, the sweeping mask mandate for K-12 students, and other restrictions as set forth herein and in the Reopen STL Order.

COUNT EIGHT – Arbitrary, Capricious, and Unreasonable Action – Unreasonable Substantive Restrictions

125. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

126. Missouri law requires that Defendants’ actions in imposing COVID-19-related restrictions must not be arbitrary, capricious, unreasonable, unconstitutional, or unlawful. § 536.160, RSMo.

127. The Reopen STL Order contains a series of restrictions on personal, religious, and economic freedom that are arbitrary, capricious, and unreasonable.

128. As alleged herein, the Order requires that “outdoor events and activities, despite the number of attendees, must require social distancing and face coverings.” This outdoor mask mandate is arbitrary, capricious, and unreasonable based on the proper consideration of best scientific principles and other aspects of the problem.

129. As alleged herein, the Order requires that all students in schools from kindergarten through twelfth grade must be masked, with very limited exception. This school mask mandate is arbitrary, capricious, and unreasonable based on the proper consideration of best scientific principles and other aspects of the problem.

130. As alleged herein, the Order requires pre-approval by the government for private meetings, activities, and gatherings of all kinds. This pre-approval requirement for private meetings is arbitrary, capricious, and unreasonable based on the proper consideration of best scientific principles and other aspects of the problem.

131. As alleged herein, the Order imposes significant restrictions on religious activities, including requiring pre-approval for religious meetings and imposing capacity restrictions on places of worship. These restrictions on the free exercise of religion are arbitrary, capricious, and unreasonable based on the proper consideration of best scientific principles and other aspects of the problem.

CONCLUSION

WHEREFORE, Plaintiff respectfully requests that this Court:

- a. Declare that Defendants' Reopen STL Order and its predecessor Orders, including the specific provisions discussed herein, are unconstitutional, unlawful, arbitrary, capricious, unreasonable, and invalid under Missouri law;
- b. Grant relief by injunction, certiorari, mandamus, prohibition, or other appropriate action, providing that Defendants' Reopen STL Order and its predecessor Orders, including the specific provisions discussed herein, are unconstitutional, unlawful, arbitrary, capricious, unreasonable, and invalid under Missouri law;
- c. Enter a final judgment in Plaintiff's favor on all Counts in this Complaint;
- d. Grant such other and further relief as the Court deems just and proper under the circumstances.

Dated: May 11, 2021

Respectfully submitted,

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