

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

<p>ILLINOIS RIGHT TO LIFE COMMITTEE,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>J.B. PRITZKER, in his official capacity as Governor of the State of Illinois,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">No. 1:20-cv-3675</p> <p style="text-align: center;">Complaint</p>
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INTRODUCTION

1. Churches are a form of expressive association because an expressive association is simply the corporate manifestation of speech and interaction within a community of shared belief or common purpose. *See Roberts v. Jaycees*, 468 U.S. 609 (1984). An expressive association's events and rallies are also like protest rallies and marches. And like churches and marches, many expressive associations engage in timely speech on issues of current concern. And the U.S. Supreme Court has recognized that in-person conversation is the most persuasive form for such speech. *McCullen v. Coakley*, 573 U.S. 464, 488-89 (2014).

2. Yet, unlike churches, Illinois Right to Life is barred from gathering in groups greater than 10 under Governor Pritzker's Executive Order 2020-38. And unlike protestors against police brutality, it has not been given an exemption based on his sympathy, recognition, and participation. This disparate treatment of similar expressive activities violates both the First and 14th Amendments.

3. Therefore, Illinois Right to Life brings this suit under 42 U.S.C. § 1983, seeking declaratory and injunctive relief.

PARTIES

4. Plaintiff Illinois Right to Life is a nonprofit organization that educates on the beauty and value of all human life regardless of a person's size, gender, race, age, or disability. They use a grassroots approach to build a culture of life in Illinois that welcomes and loves all human life from conception through natural death. They are headquartered in Cook County, Illinois.

5. Defendant J.B. Pritzker is governor of the State of Illinois and the authority for Executive Order 2020-38. He lives and works in Cook County, Illinois. His address for service of process is Office of the Governor, 100 W. Randolph St., 16-100, Chicago IL 60601.

JURISDICTION AND VENUE

6. This case raises claims under the First and 14th Amendments of the United States Constitution and 42 U.S.C. § 1983. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

7. Venue is appropriate under 28 U.S.C. § 1391(b)(1) and (2) because the Defendant is headquartered in, and a substantial portion of the events giving rise to the claims occurred in, the Northern District of Illinois.

FACTUAL ALLEGATIONS

8. Illinois Right to Life (IRL) is Illinois' leading pro-life organization.

9. IRL typically gathers in-person in groups of more than 10 or 50 persons for a variety of activities: nearly twenty training sessions for its members and activists each fall; rallies in public places connected to the pro-life cause; educational panel discussions around timely topics; and speaking engagements at schools and churches.

10. This spring, because of the ban on group gatherings, IRL had to cancel two planned panel discussions featuring a national speaker from Colorado who intended to address the connections between abortion, pornography and human trafficking. IRL anticipated over 100 attendees at each event. When a new Planned Parenthood clinic opened in Waukegan, IRL held a socially distanced protest in conjunction with other organizations that was minimally attended because of fear among its activists about the order banning gatherings.

11. Fundraising events make IRL's other activities possible. Each summer for the last 11 years, for instance, IRL has hosted a Rise and Dine Benefit Breakfast for Project Love, its charitable effort to support women in crisis pregnancies. Project Love provides grants to women who seek assistance from pregnancy resource centers and find themselves facing financial hardships at the same time as their pregnancy. Project Love makes direct payments to landlords, utilities, and other creditors to help women who otherwise feel financially incapable of carrying their babies to term. A majority of the women who receive Project Love's support come

from minority backgrounds. IRL believes Project Love's work is especially important in this moment, when so many more people than normal are facing deep financial distress. Yet this year the "Rise and Dine Breakfast" was canceled because of the Governor's ban on group gatherings, and their small-dollar fundraiser selling Mother's Day greeting cards at area parishes largely failed as well.

12. Looking forward, IRL is scheduled to have a nationally known speaker come to a private venue in Illinois on July 23, 2020, to headline its 52nd Leaders for Life banquet, which was rescheduled from April due to COVID-19. This annual event draws hundreds of attendees who generously support IRL's work and listen to the speaker. IRL is working with its banqueting host to take numerous practical steps to provide a safe, welcoming, COVID-conscious event for its guests and supporters.

13. The funds raised at the Leaders for Life banquet make possible much of IRL's work: last year many of the dollars raised at the banquet were dedicated to the highly successive Pro-Life Training Tour, which equipped hundreds of IRL's members and supporters with tools and information to spread IRL's pro-life message to friends, neighbors, and especially women making these difficult decisions about whether to terminate a pregnancy. The funds also paid for physical speech collateral, such as pro-life bumperstickers and t-shirts, which often function as conversation starters for IRL's trained activists.

14. Looking from weeks to months ahead, IRL intends to repeat its highly successful Pro-Life Training Tour; last year the tour held 19 events, most of which drew over 50 people.

15. IRL feels especially convicted that its pro-life educational speech is highly timely and must continue as long as the doors to abortion clinics remain open, even in the midst of a pandemic. Associated Press, “Abortion clinics: Pandemic boosts demand, heightens stress,” Chicago Sun-Times (April 13, 2020).¹

16. IRL believes that Internet-based alternatives are not sufficient to spread its speech effectively. Abortion is a deeply personal topic; the issues IRL works on are some of the most personal and emotional decisions that women and others face in their lifetimes, and conversations around them often turn emotional. A videoconference cannot replace the interpersonal interaction called for around this topic. IRL believes that in-person, human-to-human interactions are the best way to compassionately share its views.

17. Governor Pritzker’s Executive Order 2020-38, § 2.d (issued May 29, 2020), states, “Any gathering of more than 10 people is prohibited unless exempted by this Executive Order.”²

¹ Available online at <https://chicago.suntimes.com/coronavirus/2020/4/13/21219255/abortion-clinics-pandemic-boosts-demand-heightens-stress-texas-coronavirus-covid-19-womens-health>.

² Available online at <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-38.aspx>.

18. That same order exempts religious organizations. *Id.* at § 2.j.a.

Churches and other faith-based associations are “encouraged to consult and follow the recommended practices and guidelines from the Illinois Department of Public Health,” which means “limit[ing] indoor services to 10 people.” *Id.* But they are only “encouraged” to “consult” the “recommended” “guidelines”; they are not required to obey them.

19. Governor Pritzker also has declined to enforce his executive order against protestors assembling in groups of hundreds or more in response to recent police brutality. The Governor has characterized these marchers as “exercising their First Amendment rights” and stated that he was deploying National Guard troops to “protect[. . . the] First Amendment rights of peaceful protesters.” In fact, he himself has engaged in one such march, recognizing the right of participants to make a free choice to attend even amidst a pandemic.

20. Yet in other instances, police are deployed to break up gatherings and political rallies. *See, e.g.*, “Police Break Up Rally Protesting Stay-At-Home Order At Buckingham Fountain,” CBS-2 (May 25, 2020).³ When Chicago police broke up a political protest at the end of May, Mayor Lori Lightfoot tweeted, “[W]hile we respect 1st amendment rights, this gathering posed an unacceptable health risk and was dispersed. No matter where in the city you live, no one is exempt from @GovPritzker’s stay-at-home order.” *Id.*

³ Available online at <https://chicago.cbslocal.com/2020/05/25/police-break-up-rally-protesting-stay-at-home-order-at-buckingham-fountain/>.

21. Because enforcement of the order is on the whim of the Governor or Mayor, and because IRL wants to obey the law, IRL cannot hold its events. *See Am. Civil Liberties Union of Illinois v. Alvarez*, 679 F.3d 583, 591 (7th Cir. 2012).

22. Governor Pritzker has issued a “Restore Illinois” plan that imposes an attendance cap of 50 on gatherings in Phase 4,⁴ a limitation the enforcement of which the Governor recently reaffirmed in remarks to the media. Dan Petrella, “Gov. J.B. Pritzker cool to hotel industry’s push for larger gatherings in next phase of reopening,” *Chi. Trib.* (June 15, 2020);⁵ “Illinois moving into Phase 4 of coronavirus reopening plan Friday: Here are the full guidelines,” *WGN-9* (June 22, 2020).⁶ Thus, even if the state moves into the next phase in coming weeks or months, IRL will continue to be barred from holding its rallies, trainings, seminars, and fundraisers because of the 50-person ban.

⁴ “Restore Illinois,” Office of the Governor (May 5, 2020), available online at <https://coronavirus.illinois.gov/sfc/servlet.shepherd/document/download/069t000000BadS0AAJ?operationContext=S1>.

⁵ Available online at <https://www.chicagotribune.com/coronavirus/ct-coronavirus-illinois-hotels-pritzker-20200615-jqup6a65irekjdguyi45m3xyne-story.html>.

⁶ Available online at https://wgntv.com/news/coronavirus/illinois-moving-into-phase-4-of-coronavirus-reopening-plan-friday-here-are-the-full-guidelines/?fbclid=IwAR0kV_RUKHw7b9DpLKO0Pao0XcmzPJUhFCIBJHNorloFC3gr_mN4Gg6IhM (“Meetings and events: Venues and meeting spaces can resume with the lesser of up to 50 people OR 50% of overall room capacity. . . . This includes activities such as conferences and weddings.”).

COUNT I

By treating IRL differently from other expressive associations and activities, the Governor's Executive Order 2020-38 violates the First Amendment.

23. The allegations contained in all preceding paragraphs are incorporated herein by reference.

24. The rights to freedom of speech and assembly in the First Amendment have been incorporated to and made enforceable against the states through the 14th Amendment guarantee of due process. *Gitlow v. New York*, 268 U.S. 652 (1925).

25. When the state grants access to one set of speakers, it must give equal access and treatment to all speakers of a similar character. *See Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 48 (1983). It may not favor one speaker over another. *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828 (1995); *Citizens United v. F.E.C.*, 558 U.S. 310, 340 (2010). To do otherwise is to discriminate in favor of certain speakers and against other similar speakers based only on the content of their speech — in this case religious speech versus educational speech, or pro-Black Lives Matter speech versus pro-life speech. The First Amendment does not allow content-based restrictions unless the government provides a compelling government interest and the restriction is narrowly tailored to serve that interest. *Reed v. Town of Gilbert*, 576 U.S. 155 (2015).

26. Though the government has a compelling interest in preventing the spread of COVID-19, its restrictions are not narrowly tailored to prevent the spread of COVID-19 because there is no reason to believe that the content or viewpoint of

the speakers exempt from the governor's order makes those speakers less susceptible to spreading COVID-19. *See Roberts v. Neace*, 958 F.3d 409, *12 (6th Cir. 2020) (per curiam). *See also* Daniela Hernandez, et al., "Early Data Show No Uptick in Covid-19 Transmission From Protests," *Wall St. J.* (June 18, 2020).⁷ Moreover, speech at fundraising events is entitled to First Amendment protection just like speech in other settings. *See Illinois ex rel. Madigan v. Telemarketing Assocs.*, 538 U.S. 600 (2003).

COUNT II

By treating IRL differently from other expressive associations and activities, the Governor's Executive Order 2020-38 violates the 14th Amendment's equal-protection clause.

27. The allegations contained in all preceding paragraphs are incorporated herein by reference.

28. The right to equal treatment of speakers under the First Amendment is coterminous with the general right to equal protection of the laws under the 14th Amendment. *Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 96 (1972). *See also Proft v. Raoul*, 944 F.3d 686, 691 (7th Cir. 2019).

29. Therefore, just as the executive order violates the First Amendment, it also violates the 14th Amendment's equal protection clause.

⁷ Available online at <https://www.wsj.com/articles/recent-protests-may-not-be-covid-19-transmission-hotspots-11592498020>.

PRAYER FOR RELIEF

Plaintiff Illinois Right to Life respectfully requests that this Court:

a. Declare that limiting expressive associations, like Plaintiff, to in-person meetings of no more than 10 people, while placing no restrictions on in-person meetings of religious expressive associations or certain protest marches, violates the First Amendment's free speech clause;

b. Declare that limiting expressive associations, like Plaintiff, to in-person meetings of no more than 10 people, while placing no restrictions on in-person meetings of religious expressive associations or certain protest marches, violates the 14th Amendment's equal protection clause;

c. Enjoin Governor Pritzker from enforcing Executive Order 2020-38 against Plaintiff Illinois Right to Life;

d. Award Plaintiffs their costs and attorneys' fees under 42 U.S.C. § 1988; and

e. Award any further relief to which Plaintiffs may be entitled.

Dated: June 23, 2020

Respectfully Submitted,

**ILLINOIS RIGHT TO LIFE
COMMITTEE**

By: /s/ Daniel R. Suhr

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

ILLINOIS RIGHT TO LIFE
COMMITTEE,

Plaintiff,

v.

J.B. PRITZKER,

Defendant.

No. 1:20-cv-3675

**Motion for Preliminary Temporary
Restraining Order and Preliminary
Injunction**

Pursuant to Fed. R. Civ. P. 65, Plaintiff respectfully moves for preliminary relief in the form of a temporary restraining order and preliminary injunction to avoid imminent and irreparable injury, as set forth in the attached supporting memorandum of law and declaration.

Plaintiff will promptly contact attorneys for Defendant in the hope of avoiding the need for an *ex parte* hearing and order, and will advise the Court as promptly as possible of the results of that outreach.

Dated: June 23, 2020

Respectfully Submitted,

**ILLINOIS RIGHT TO LIFE
COMMITTEE**

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<p>ILLINOIS RIGHT TO LIFE COMMITTEE,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>J.B. PRITZKER,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">No. 1:20-cv-03675</p> <p style="text-align: center;">Memorandum of Law Supporting Motion for Preliminary Relief</p>
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INTRODUCTION

It is a fundamental constitutional rule, embodied in both the First and 14th Amendments, that “government regulation may not favor one speaker over another.” *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828 (1995). The Constitution “[p]rohibit[s . . .] restrictions distinguishing among different speakers, allowing speech by some but not others.” *Citizens United v. F.E.C.*, 558 U.S. 310, 340 (2010). Such distinctions are especially problematic when they are extended to the politically connected or sympathetic but are denied to those who are not part of the “in” crowd. *See Southworth v. Bd. of Regents*, 307 F.3d 566, 594 (7th Cir. 2002).

Governor Pritzker’s executive order violates this foundational guarantee of similar treatment for similar speakers. He has banned gatherings of 10 or more in his most recent COVID-19 order, issued May 29, but included a specific carve-out for houses of worship to gather. A week later he created an informal carve-out, publicly announcing he would not enforce the order against those protesting police brutality and racial injustice.

The Constitution does not permit the governor to limit gatherings of some expressive associations, while allowing religious assemblies and certain protesters to gather without any limitation based solely on the content or viewpoint of such gatherings. An injunction must issue now to protect the plaintiff, whose activities are at the core of the First Amendment and whose speech is timely tied to issues of public concern.

FACTS

Illinois Right to Life (IRL) is the leading pro-life education and advocacy organization in Illinois. It is the quintessential “expressive association” with a goal to educate and advocate around an important issue in our politics and society writ large. *See Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984). Its mission is to “educate[] on the beauty and value of all human life regardless of a person’s size, gender, race, age, or disability. We use a grassroots approach to build a culture of life in Illinois that welcomes and loves all human life from conception through natural death.” Knorr Decl. ¶ 3.

In order to advance that mission, IRL undertakes a number of in-person events and activities. To boost its media profile, engage its supporters, and draw attention to its cause, it hosts major events like panels featuring local and national speakers, *id.* at ¶ 4, or hosts rallies near abortion clinics, *id.* at ¶ 5. To equip its supporters with information and to draw in new constituents, it hosts training sessions across Illinois each fall. *Id.* at ¶ 8.

To fund all these activities and the staff it takes to organize and run them, IRL undertakes several major fundraising events every year. IRL already had to cancel its “Rise and Dine Breakfast” this year because of the Governor’s order. *Id.* at ¶ 6. The breakfast raises funds for Project Love, which provides grants to low-income women who choose life for their babies but face difficult financial circumstances when doing so. *Id.*

The biggest of IRL's annual fundraising events is its Leaders for Life dinner, 51 years running. *Id.* at ¶¶ 11-12. This dinner always features a nationally prominent speaker who delivers an inspiring message to the crowd of hundreds of attendees. *Id.* It generates approximately one-third of the organization's overall annual budget. *Id.* at ¶ 11. In addition to the messages delivered at the event itself, the funds it raises are used for speech activities such as IRL's training tour and physical speech collateral, such as pro-life bumperstickers and t-shirts. *Id.* at ¶ 15.

IRL had previously scheduled the dinner for the spring, but rescheduled it this year due to the Governor's ban on gatherings during COVID-19. *Id.* at ¶ 12. The dinner is currently scheduled for July 23, 2020, at a large private venue in Illinois. *Id.* at ¶ 13. The staff of IRL and the venue are working diligently to ensure as many best practices as possible for maintaining a safe environment for guests and employees. *Id.* at ¶ 14. IRL already has placed a deposit on the venue and engaged a nationally known speaker who intends to come and share an upbeat pro-life message. *Id.* at ¶ 13.

All these activities are barred by the Governor's executive order. Executive Order 2020-38, § 2.d (issued May 29, 2020) states, "Any gathering of more than ten people is prohibited unless exempted by this Executive Order."¹ The order exempts

¹ Available online at <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-38.aspx>.

Though this limit may escalate to a 50-person cap in Phase 4, this mild increase makes no difference to IRL's planned activities. See "Illinois moving into Phase 4 of coronavirus reopening plan Friday: Here are the full guidelines," WGN-9 (June 22, 2020), <https://wgntv.com/news/coronavirus/illinois-moving-into-phase-4-of->

religious organizations. *Id.* at § 2.j.a. Churches and other faith-based associations are “encouraged to consult and follow the recommended practices and guidelines from the Illinois Department of Public Health,” which means “limit[ing] indoor services to 10 people.” *Id.* But they are only “encouraged” to “consult” the “recommended” “guidelines”; they are not required to obey them.

Governor Pritzker also has declined to enforce his executive order against protestors assembling in groups of hundreds or more in response to recent police brutality. The Governor has characterized these gatherings as “exercising their First Amendment rights.” Cole Lauterbach, “Pritzker stresses National Guard in Chicago is only ‘support’ for police,” *TheCenterSquare.com* (May 31, 2020).² In fact, he has gone so far to march with them himself, engaging in civil disobedience of his own order. Mike Nolan, “Gov. Pritzker marches with hundreds in Matteson, demanding racial equality,” *Chi. Trib.* (June 9, 2020).³

Thus, houses of worship and politically allied protestors are granted favored status, while other expressive associations are banned from meeting. While abortion

[coronavirus-reopening-plan-friday-here-are-the-full-guidelines/?fbclid=IwAR0kV_RUKHw7b9DpLKO0Pao0XcmzPJUhfCIBJHNorloFC3gr_mN4Gg6IhM](https://www.thecentersquare.com/illinois/pritzker-stresses-national-guard-in-chicago-is-only-support-for-police/article_8590229a-a38e-11ea-955c-f3536e04f622.html) (“Meetings and events: Venues and meeting spaces can resume with the lesser of up to 50 people OR 50% of overall room capacity. . . . This includes activities such as conferences and weddings.”).

² Available online at [thecentersquare.com/illinois/pritzker-stresses-national-guard-in-chicago-is-only-support-for-police/article_8590229a-a38e-11ea-955c-f3536e04f622.html](https://www.thecentersquare.com/illinois/pritzker-stresses-national-guard-in-chicago-is-only-support-for-police/article_8590229a-a38e-11ea-955c-f3536e04f622.html).

³ Available online at <https://www.chicagotribune.com/suburbs/daily-southtown/ct-sta-matteson-march-pritzker-st-0610-20200609-dig6tag4bzezhnoftw537hxxde-story.html>.

clinics' doors remain open, IRL feels compelled to continue its vibrant, active pro-life speech, and thus must bring this case to safeguard its rights.

STANDARD OF REVIEW

The U.S. Court of Appeals for the Seventh Circuit has established a two-stage test for the issuance of preliminary relief. First, the movant must show (1) irreparable harm in the period before resolution on the merits; (2) traditional legal remedies are inadequate, and (3) there is at least some likelihood of success on the merits. *HH-Indianapolis, LLC v. Consol. City of Indianapolis*, 889 F.3d 432, 437 (7th Cir. 2018). If a party meets these thresholds, the court moves to “weigh[] the factors against one another, assessing whether the balance of harms favors the moving party or whether the harm to other parties or the public is sufficiently weighty that the injunction should be denied.” *Id.*

Because this case arises in the First Amendment context, the focus is on the likelihood of success on the merits, as the other factors are generally presumed. *Korte v. Sebelius*, 735 F.3d 654, 666 (7th Cir. 2013). This Court should conclude that IRL has made the requisite showings, and that the balance of harms favors its request.

ARGUMENT

The Court should issue a temporary restraining order and preliminary injunction enjoining the Governor from enforcing Executive Order 2020-38 against IRL. IRL is suffering irreparable harm without an injunction because it is prevented by the order from exercising its First Amendment rights, traditional legal

remedies are inadequate to resolve this harm, and it is likely to succeed on the merits of its claims.

I. IRL suffers irreparable harm by being prevented from holding gatherings larger than 10 people.

It is blackletter law that the “loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury” for purposes of the issuance of a TRO and preliminary injunction. *Backpage.com, LLC v. Dart*, 807 F.3d 229, 239 (7th Cir. 2015) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

IRL feels a particular sense of urgency to continue its speech despite the pandemic because abortion clinics remain open during this time, and so IRL wants to reach women considering abortion with its pro-life views and resources for women in crisis. Associated Press, “Abortion clinics: Pandemic boosts demand, heightens stress,” *Chicago Sun-Times* (April 13, 2020).⁴ See *In re Perry*, 859 F.2d 1043, 1047 (1st Cir. 1988) (“Without question, the right to free speech includes the right to timely speech on matters of current importance.”).

II. Traditional legal remedies are inadequate to resolve the irreparable harm caused by the Governor’s executive order.

Traditional legal remedies (i.e., money damages) are inadequate. The injury here is literally “irreparable” — there is no way for the Governor to later make whole the lost opportunity to exercise First Amendment freedoms now.

⁴ Available online at <https://chicago.suntimes.com/coronavirus/2020/4/13/21219255/abortion-clinics-pandemic-boosts-demand-heightens-stress-texas-coronavirus-covid-19-womens-health>.

Even if money damages could make an ordinary First Amendment plaintiff whole — and they cannot, *see generally National People’s Action v. Wilmette*, 914 F.2d 1008, 1013 (7th Cir. 1990) (“injunctions are especially appropriate in the context of [F]irst [A]mendment violations because of the inadequacy of money damages”) — they would not suffice here, where the Defendant is infringing on IRL’s First Amendment rights during these days when women continue making the decision whether or not to choose an abortion. No pro-life message six months from now will reach a woman making that decision right now.

III. IRL is likely to succeed on the merits of its First and 14th Amendment claims.

IRL is likely to succeed on the merits of its First and 14th Amendment claims. At a minimum, it exceeds the “low threshold” that its claims have a “better than negligible” chance of success. *HH-Indianapolis, LLC*, 889 F.3d at 437.

A. IRL is likely to succeed on its First Amendment claim against Defendant for violating its right to equal treatment among speakers. (Count I)

Usually cases come before courts because government has punished, burdened, or barred a particular class of speech or speakers. Though less common, the reverse principle is equally true: “In the realm of private speech or expression, government regulation may not favor one speaker over another.” *Rosenberger*, 515 U.S. at 828 (emphasis added). Phrased differently, “the Government may commit a constitutional wrong when by law it identifies certain preferred speakers. By taking the right to speak from some and giving it to others, the Government deprives the

disadvantaged person or class of the right to use speech to strive to establish worth, standing and respect for the speaker's voice." *Citizens United*, 558 U.S. at 340.

The First Amendment "[p]rohibit[s . . .] restrictions distinguishing among different speakers, allowing speech by some but not others." *Id. Accord Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 659 (1994) ("Regulations that discriminate . . . among different speakers within a single medium, often present serious First Amendment concerns."); *Minneapolis Star & Tribune Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 585 (1983) (similar). These concerns are especially pronounced when favor is conferred on politically powerful or sympathetic speakers and denied to speakers on the political outs. *See Southworth*, 307 F.3d at 594.

This is a *de facto* content-based restriction on speech — the type that is "presumptively unconstitutional." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Because the distinction turns on the content of the speaker's speech, religious vs. educational, or Black Lives Matter vs. Pro-Life, it is subject to strict scrutiny. *Id.*

The Governor's executive order violates this axiomatic First Amendment principle: It favors one class of speakers, houses of worship, while barring all others from gathering. *See Exec. Order 2020-38*, § 2.j.a.

And more recently, he has forbore enforcing his ban on gatherings against those protesting racial injustice and police brutality, crediting "the First Amendment rights of peaceful protesters." "Pritzker Activates Additional National Guard Members, ISP Troopers to Aid Local Law Enforcement," NBC-5 (June 1,

2020).⁵ In fact, the Governor acknowledged that he was permitting protestors to make a free choice whether to gather amidst the pandemic: “It’s not lost on me that the peaceful protesters who have been out the last few days weighed the risks of the pandemic against coming out to speak the truth. I see you. I hear you. I understand why you made the choice you made.” “National Guard will be in Chicago to support police, protect First Amendment rights, mayor says,” Fox-32 (June 1, 2020).⁶

And he himself has marched with them, defending doing so amidst a pandemic by saying, “Especially at this moment, it’s important to express ourselves. It’s important to stand up for people’s First Amendment rights, and I’m talking about the peaceful protesters across the state. It’s important to have the governor stand with them . . .” Rick Pearson, “Republicans rip Pritzker as social distancing hypocrite as he joins protests; he hits back on Trump conspiracy tweet,” Chi. Trib. (June 9, 2020).⁷

⁵ Available online at <https://www.nbcchicago.com/news/local/pritzker-activates-additional-national-guard-members-isp-troopers-to-aid-local-law-enforcement/2282229/>.

⁶ Available online at <https://www.fox32chicago.com/news/national-guard-will-be-in-chicago-to-support-police-protect-first-amendment-rights-mayor-says>.

⁷ Available online at <https://www.chicagotribune.com/politics/ct-coronavirus-pritzker-trump-protests-george-floyd-congress-20200609-bifn4ekl6bewdhxtujmdplkfp-story.html>.



Though the Governor permits people to make a free choice to come out and speak truth and express themselves about racial injustice and police brutality, his executive order prevents people from making a free choice to gather to learn about or advocate for pro-life views. Participation in the protests (or attendance at church for that matter) is at the option of the participant, based on his or her weighing of the risks and safety precautions. But for everyone else, the Governor’s order is a blanket ban that is enforceable by police, preventing a free choice for IRL and its supporters. *See* Exec. Order 2020-38, 1 (“This Executive Order may be enforced by State and local law enforcement . . .”).

This sort of favoritism cannot stand, at least as applied to expressive associations. Fighting a pandemic is clearly a compelling state interest, *see Jacobson v. Massachusetts*, 197 U.S. 11 (1905), but the government must still meet

⁸ Eric Horng, “Gov. JB Pritzker attends unity gathering in memory of George Floyd in south suburban Matteson,” ABC-7 (June 8, 2020), <https://abc7chicago.com/society/governor-attends-unity-gathering-in-matteson-in-memory-of-george-floyd/6238234/>.

the requirements of narrow tailoring / least-restrictive-means. *Roberts v. Neace*, 958 F.3d 409, *12 (6th Cir. 2020) (per curiam). This the government cannot do here: IRL's annual dinner is no more likely to spread COVID-19 than a church service, and a pro-life rally is no more likely to do so than a protest march.

And though commercial businesses may be substantively different in form and character from churches or protestors, expressive associations like IRL are not. Indeed, “[r]eligious groups are the archetype of associations formed for expressive purposes,” *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 200 (2012) (Alito, J., concurring). *Accord* *IDK, Inc. v. Cty. of Clark*, 836 F.2d 1185, 1195 (9th Cir. 1988) (listing churches alongside civil rights and lobbying organizations as examples of expressive associations); *A.M. v. N.M. Dep’t of Health*, 117 F. Supp. 3d 1220, 1258 (D.N.M. 2015) (religious, political, and civic groups all recognized together as expressive associations). And their speech about issues of major social concern “belong[s] on the highest rung of the hierarchy of First Amendment values,” *N.A.A.C.P. v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982), just like religious speech. And this speech is most effective and persuasive when delivered in person. *McCullen v. Coakley*, 573 U.S. 464, 488-89 (2014); *Hill v. Colorado*, 530 U.S. 703, 780 (2000) (Scalia, J., dissenting). Given that religious associations are a subset of expressive associations, these “entities of similar character” are entitled to similar treatment. *See Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 48 (1983).

Under the executive order, 100 people may go to a church sanctuary on Sunday morning, sit inside in pews, shake sanitized hands at the passing of the peace, and listen to a 20-minute homily about faith, sandwiched between announcements and prayers. But the same 100 people may not go to the same church's fellowship hall, sit inside in rows of folding chairs, shake sanitized hands before the event begins, and listen to a 30-minute training about pro-life outreach, sandwiched between announcements and prayers. The only difference between permitted and proscribed speech is the content. That is impermissible under *Reed*.

Similarly, the Governor permits hundreds of people to gather in a parking lot, loft homemade posters, listen to speakers talk about racial injustice and police brutality, and wave banners. But the same-sized crowd could not gather in a parking lot near an abortion clinic, listen to speakers talk about pro-life views, and wave pro-life signs. Again, the difference between permitted and proscribed speech is the content the Governor favors. That cannot stand.

The governor's decision cannot survive strict scrutiny; he has denied other expressive associations the favored status currently conferred on churches and protestors, even though they all exist at the heart of the First Amendment.

B. IRL is likely to succeed on its claim for equal protection of the laws under the 14th Amendment. (Count II)

The guarantees of the 14th Amendment's equal protection clause provide the same basis for relief as the free speech clause. *Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 96 (1972). *See Proft v. Raoul*, 944 F.3d 686, 691 (7th Cir. 2019) (“[I]t makes no difference whether a challenge to the disparate treatment of speakers or speech

is framed under the First Amendment or the Equal Protection Clause.” Underlying citation omitted). Because the Governor’s policies violate the First Amendment, they also necessarily violate the 14th Amendment.

IV. IRL and the public will suffer substantial harm without a preliminary order while there would be no harm to Defendant should the Court enter a preliminary order.

As explained above, IRL will suffer irreparable harm if an injunction is not issued. The converse is not true of the governor; there is no harm to being prevented from enforcing an unconstitutional policy. *Planned Parenthood of Ind. & Ky., Inc. v. Adams*, 937 F.3d 973, 991 (7th Cir. 2019). The public, however, benefits from “preliminarily enjoining the enforcement of a statute that is probably unconstitutional.” *Higher Soc’y of Ind. v. Tippecanoe Cty.*, 858 F.3d 1113, 1116 (7th Cir. 2017). And though the public benefits from a safe environment, there is no basis to believe that pro-life speakers, as opposed to pro-Black Lives Matter speakers or religious associations, are any more likely to spread COVID-19. Moreover, “injunctions protecting First Amendment freedoms are always in the public interest.” *Christian Legal Soc’y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006). This principle applies as well here as in any other circumstance: The public benefits when the First Amendment is honored.

CONCLUSION

The harm suffered by Illinois Right to Life is immediate and irreparable, monetary damages are inadequate to resolve its injury, and it is very likely to succeed on its complaint. Further, IRL and the public will suffer a substantial harm

by the squelching of public discussion of an important issue with real-world implications. Illinois Right to Life respectfully requests that its motion be granted.

Dated: June 23, 2020

Respectfully Submitted,

**ILLINOIS RIGHT TO LIFE
COMMITTEE**

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

<p>ILLINOIS RIGHT TO LIFE COMMITTEE,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>J.B. PRITZKER,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">No.</p> <p style="text-align: center;">Declaration of Mary Kate Knorr</p>
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Pursuant to 28 U.S.C. § 1746, I declare that the following facts are true, to the best of my knowledge, information, and belief:

1. I am a resident of Will County, Illinois.
2. I am executive director of Illinois Right to Life Committee, headquartered in Chicago, Illinois.
3. Illinois Right to Life is a nonprofit organization that educates on the beauty and value of all human life regardless of a person's size, gender, race, age, or disability. We use a grassroots approach to build a culture of life in Illinois that welcomes and loves all human life from conception through natural death.
4. This spring, because of the ban on group gatherings, we had to cancel two planned panel discussions featuring a national speaker from Colorado who

intended to address the link between abortion, pornography and human trafficking. We had anticipated over 100 attendees at each event.

5. When a new Planned Parenthood clinic opened in Waukegan, we held a socially distanced protest in conjunction with other organizations that was minimally attended because of fear among its activists about the order banning gatherings.
6. IRL hosts a Rise and Dine Benefit Breakfast for Project Love, its charitable effort to support women in crisis pregnancies. Project Love provides grants to women who seek assistance from pregnancy resource centers and find themselves facing financial hardships at the same time as their pregnancy. Project Love makes direct payments to landlords, utilities, and other creditors to help women who otherwise feel financially incapable of carrying their babies to term. A majority of the women who receive Project Love's support come from minority backgrounds. We believe Project Love's work is especially important in this moment, when so many more people than normal are facing deep financial distress. This year we had to cancel the "Rise and Dine Breakfast" because of the Governor's ban on group gatherings, and our small-dollar fundraiser selling Mother's Day greeting cards at area parishes failed for the same reason.
7. Our partners at our affiliate IRL Action plans to hold its annual fundraising event in the fall.

8. We intend to repeat our highly successful Pro-Life Training Tour starting in September; last year the tour held 19 events, most of which drew over 50 people. I also look forward to resuming an active schedule of speaking on college campuses, in churches, and other venues that welcome me to share IRL's pro-life message.
9. We feel especially convicted that our pro-life educational speech is highly timely and must continue as long as the doors to abortion clinics remain open, even in the midst of a pandemic.
10. We believe that Internet-based alternatives are not sufficient to communicate our speech effectively. I know from my years in this movement that abortion is a deeply personal topic, and conversations around it often turn emotional. We believe that in-person, human-to-human interactions are the best way to compassionately share our views.
11. Each spring we hold our annual banquet. This is our major fundraising event for the year, generating approximately one-third of our total annual budget. Hundreds of people have attended in past years, and the event generates a substantial portion of the funds that support our organization. The event is also an important opportunity to draw media attention to our cause, engage our members and supporters, and hear a speech from a major pro-life leader.
12. This year we have already once postponed the 52nd Annual Leaders for Life banquet because of the Governor's ban on group gatherings.

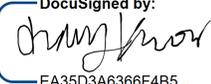
13. Our 52nd Annual Leaders for Life banquet has now been rescheduled to Thursday, July 23. We have booked a nationally known speaker to provide our keynote address. We have reserved a private venue for the event. We have paid deposits to the speaker, the facility, and other necessary vendors for the event.
14. We are developing a detailed and strategic plan for health and safety practices based on guidelines being used for similar public gatherings across the country. This plan requires that attendees wear a face covering when not seated at their table, caps the number of event attendees under a percentage of the venue's capacity, and requires attendees use hand sanitizer when entering the building or leaving the bathroom facilities, in addition to other health and safety standards that have been implemented by the venue directly.
15. The funds raised at the Leaders for Life banquet make possible much of our work: last year many of the dollars raised at the banquet were dedicated to the highly successful Pro-Life Training Tour, which equipped hundreds of our members and supporters with tools and information to spread our pro-life message to friends, neighbors, and especially women making these difficult decisions about whether to terminate a pregnancy. The funds also paid for physical speech collateral, such as pro-life bumperstickers and t-shirts, which often function as conversation starters for IRL's trained activists.

16. However, the banquet is illegal under the Governor's order banning gatherings over 10, and will remain illegal if the State enters phase four under the Governor's plan banning gatherings over 50.

17. Our planned training tour, our scheduled fall fundraiser, and our anticipated advocacy rallies are all also illegal under the Governor's order banning gatherings over 10, and will remain illegal if the State enters phase four under the Governor's plan banning gatherings over 50.

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

Dated: June __, 2020

DocuSigned by:

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Mary Kate Knorr, declarant