

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

ILLINOIS REPUBLICAN PARTY,
WILL COUNTY REPUBLICAN
CENTRAL COMMITTEE,
SCHAUMBURG TOWNSHIP
REPUBLICAN ORGANIZATION, and
NORTHWEST SIDE GOP CLUB,

Plaintiffs,

v.

J.B. PRITZKER, in his official capacity
as Governor of the State of Illinois,

Defendant.

No. 1:20-cv-3489

Complaint

INTRODUCTION

1. Political parties are for political expression what churches are for religious expression: the corporate manifestation of speech and interaction within a community of shared belief. Political parties' events and rallies are also like protest rallies and marches. And like churches and marches, political parties operate in a world where time matters; the 2020 election is only months away. Also similarly, they operate best in a physical setting; in-person contact is the most persuasive form for communicating ideas. *McCullen v. Coakley*, 573 U.S. 464, 488-89 (2014).

2. Yet, unlike churches, political parties are barred from gathering in groups greater than 10 under the Governor's Executive Order 2020-38. And unlike protestors against police brutality, they have 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. The Illinois Republican Party and other plaintiffs (“the Party”) bring this suit under 42 U.S.C. § 1983, seeking declaratory and injunctive relief.

PARTIES

4. Plaintiff Illinois Republican Party is a registered political committee that is the statewide vehicle for Republicans to advance their candidates and agenda in the Land of Lincoln. Led by Chairman Tim Schneider, the Party includes among its ranks federal, state, and local elected officials, supported by tens of thousands of donors, grassroots activists, and voters.

5. Plaintiff Will County Republican Central Committee is the local unit of the Republican Party responsible for organizing grassroots activities in Will County.

6. Plaintiff Schaumburg Township Republican Organization is the local unit of the Republican Party responsible for organizing grassroots activities in Schaumburg Township, Cook County.

7. Plaintiff Northwest Side GOP Club is the local unit of the Republican Party responsible for organizing grassroots activities on the northwest side of the City of Chicago (four wards) and Norwood Park Township.

8. 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

9. 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.

10. 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

11. The Illinois Republican Party is the institutional vehicle through which millions of citizens of Illinois collectively express their political and policy preferences, and support candidates for local, state, and federal office.

12. The Illinois Republican Party and its local and regional affiliates (collectively “the Party”) typically gather in-person in groups of more than 10 persons for a variety of activities: formal business meetings, such as its annual state convention and its central committee meetings; informal strategy meetings, such as staff and leadership conferring with Republican legislators, allied organizations, and consultants; rallies and bus tours, where it generates news media coverage for its candidates and issues, energizes current members, and recruits new members; and grassroots activism, such as phone banks and house parties.

13. The Party undertakes its gatherings throughout the calendar year, but it has a particular time-pressure to undertake these sessions in the next five months leading up to the 2020 general election.

14. The Party believes its effectiveness is substantially hampered by its inability to gather in person. There simply is no substitute for the energy, enthusiasm, personal connections to a candidate, and media coverage generated by a rally, a bus tour, or a fly-around. Politics is a people business, and it is most effective when people connect in person.

15. The Party is prevented from gathering more than 10 of its staff, leaders, consultants, members, donors, volunteers, activists, or supporters in one place by Governor Pritzker's Executive Order 2020-38, § 2.d (issued May 29, 2020), which states, "Any gathering of more than 10 people is prohibited unless exempted by this Executive Order."¹

16. 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.

17. Governor Pritzker also has declined to enforce his executive order against protestors assembling in large 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

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

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.

18. The Illinois Republican Party is dedicated to protecting the constitutional principles at the heart of our republic, including the separation of powers and limited government. *See* Illinois Republican Party I.A (“Our Party’s Philosophy”). The Party is prevented from gathering by an executive order (2020-38) whose authority is based on a disaster declaration of May 29, 2020.² This is the Governor’s fourth disaster declaration prompted by COVID-19; the others were issued on March 12, 2020; April 1, 2020; and April 30, 2020. The disaster declaration and executive order both rely on 20 ILCS 3305/7 of the Illinois Emergency Management Agency Act, which provides that the Governor may issue a disaster declaration that lasts for 30 days.

COUNT I

By treating the Party differently from houses of worship and protestors, the Governor’s Executive Order 2020-38 violates the First Amendment.

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

² Available online at <https://www2.illinois.gov/sites/gov/Documents/CoronavirusDisasterProc-5-29-2020.pdf>.

20. The right to freedom of speech in the First Amendment has 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).

21. 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 political speech, or protest speech versus Republican speech, and this the First Amendment does not allow without a compelling government interest and narrow tailoring. *Reed v. Town of Gilbert*, 576 U.S. 155 (2015). Though the government has a compelling interest here in preventing the spread of COVID-19, its restrictions are not narrowly tailored because it is exempting certain politically powerful or sympathetic groups while enforcing them against similarly situated actors who lack the same political favor of the Governor. See *Roberts v. Neace*, 958 F.3d 409, *12 (6th Cir. 2020) (per curiam).

COUNT II

By treating the Party differently from houses of worship and protestors, the Governor's Executive Order 2020-38 violates the 14th Amendment's equal-protection clause.

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

23. 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 Department of Chicago v. Mosley*, 408 U.S. 92, 96 (1972). See also *Proft v. Raoul*, 944 F.3d 686, 691 (7th Cir. 2019).

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

COUNT III

The Governor's second, third, and fourth disaster declarations and Executive Order 2020-38 are *ultra vires*, i.e., without legal authority.

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

26. The Illinois Emergency Management Agency Act permits the Governor to issue a disaster declaration for up to 30 days in response to an emergency, including a public health emergency.

27. The 30-day cap on a disaster declaration provides important safeguards for the citizens of Illinois, by permitting an immediate and authoritative response from the executive in a moment of crisis, but limiting that response to 30 days to ensure legislative participation in any long-term policy decisions.

28. Moreover, the Office of the Attorney General of Illinois has concluded that the text of the Act does not permit successive declarations based on the same disaster. IL Atty. Gen. Op. I – 01 – 023 (July 2, 2001). *See* Statement of Interest, U.S. Dept. of Justice, *Bailey v. Pritzker*, 3:20-cv-00474, Dkt. 15, at *11-14.

29. Because the Governor has the authority to issue only one 30-day disaster declaration, the fourth COVID-19 declaration is ultra vires. Executive Order 2020-38 is also ultra vires, because it explicitly relies on and implements the Governor's authorities under the fourth declaration.

PRAYER FOR RELIEF

Plaintiffs Illinois Republican Party, Will County Republican Central Committee, Schaumburg Township Republican Organization, and Northwest Side GOP Club respectfully request that this Court:

- a. Declare that treating political party gatherings differently from religious gatherings violates the First Amendment's free speech clause;
- b. Declare that treating political party gatherings differently from religious gatherings violates the 14th Amendment's equal protection clause;
- c. Declare that the May 29, 2020, disaster declaration and Executive Order 2020-38 are ultra vires;
- d. Enjoin Governor Pritzker from enforcing Executive Order 2020-38 against political parties;

e. Enjoin Governor Pritzker from enforcing Executive Order 2020-38 because it derives its legal authority from the May 29, 2020, disaster declaration;

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

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

Dated: June 15, 2020

Respectfully Submitted,

ILLINOIS REPUBLICAN PARTY

**WILL COUNTY REPUBLICAN
CENTRAL COMMITTEE**

**SCHAUMBURG TOWNSHIP
REPUBLICAN ORGANIZATION**

NORTHWEST SIDE GOP CLUB

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ILLINOIS REPUBLICAN PARTY, *et al.*,

Plaintiffs,

v.

J.B. PRITZKER, as Governor,

Defendant.

No. 1:20-cv-03489

**MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Pursuant to Fed. R. Civ. P. 65, Plaintiffs respectfully move 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 declarations.

Plaintiffs 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 15, 2020

Respectfully Submitted,

ILLINOIS REPUBLICAN PARTY

**WILL COUNTY REPUBLICAN
CENTRAL COMMITTEE**

**SCHAUMBURG TOWNSHIP
REPUBLICAN ORGANIZATION**

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<p>ILLINOIS REPUBLICAN PARTY, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</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-03489</p> <p style="text-align: center;">Memorandum of Law Supporting Motion for Temporary Restraining Order and Preliminary Injunction</p>
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INTRODUCTION

It is a fundamental 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 powerful 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 caved to popular outcry and media pressure and 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 him to create special exceptions for churches and protestors because of their high media profile — or in the case of the protestors, his agreement with their political viewpoint — but to deny permission to gather to other fundamental First Amendment institutions like political parties, especially those opposed to him and his party. An injunction must issue now to protect the plaintiff political parties and others whose activities are at the core of the First Amendment and who face a fast-approaching presidential election.

FACTS

The Illinois Republican Party is the recognized organization of Republicans in Illinois (Schneider Declaration at ¶ 3). Its mission is to elect Republican candidates to local, state, and federal office (*Id.* at ¶ 4). It also advocates for its platform, which consists of policy positions set by the delegates to its convention (*Id.*). As the major party opposite the party currently in power in state government, the Illinois Republican Party provides an integral civil-society counterweight to the Governor and his administration (*Id.* at ¶ 3). It has multiple local regional and county-based units that are independent but integrated into its operations (*Id.* at ¶ 5). Several of those local parties are also plaintiffs (*See* Declarations of Folisi, Pearson & Podgorski).

In-person gatherings are foundational to the Party's activities. The Party's leaders, staff, and consultants meet to develop and discuss strategy (*Id.* at ¶ 7). The Party's grassroots activists meet for caucuses and conventions to conduct the business of the party, elect officers, adopt platforms, and allocate resources (*Id.* at ¶ 6). The Party's elected officials meet with incumbent legislators and candidates to present a unified front to the electorate (*Id.*). The Party's candidates speak, work a rope-line, and interact with voters through rallies and community events, which also draw substantial media coverage that permit the Party to amplify its message without paying for advertising (*Id.* at ¶ 8). The Party raises funds through receptions, luncheons, and house parties (*Id.*). The Party reaches undecided voters and turns out its own voters through phone banks, door-to-door canvassing, and

other assemblies of volunteers (*See* Pearson Declaration at ¶ 9). Many of these activities are not possible or not as effective when done through online alternatives (*Id.*). Many can be undertaken with proper social distancing and hygiene procedures in place, such as encouraging masks, spacing seating or tables at least 6 feet apart, frequent sanitizing, and providing hand sanitizer (Schneider Declaration at ¶ 12).

The months leading up to a presidential election are the busiest and most important for the Party (*Id.* at ¶ 13). During this time, it organizes its staff, volunteers, voters, and donors to maximum effect (*Id.*). It undertakes numerous meetings and public events, including rallies, bus tours, strategy meetings, training sessions, phone banks, fundraising receptions, press conferences, headquarters ribbon-cuttings and meet-and-greet coffees (*Id.* at ¶¶ 7-8). In-person interaction is vital to ensuring the full effectiveness of these events (*Id.* at ¶ 11).

Though many of these activities are organized at the state level, just as many if not more happen through the spontaneous organizing and energy of grassroots Republicans through their local units. The Northwest Side GOP Club, for instance, wants to host a rally for the Republican candidate for Cook County State's Attorney (Podgorski Affidavit at ¶ 6). The Will County Republicans have already canceled their Juneteenth Day celebration for June 19, but are instead going to hold a July 4 celebration with picnic food and fireworks (Pearson Affidavit at ¶ 7). They are planning to hold the festivities on a farm to allow plenty of room for people to spread out and maintain safe distances if they wish as they watch fireworks and listen to speakers from their blankets and lawn chairs (*Id.*).

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 10 people is prohibited unless exempted by this Executive Order."¹ The 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.

Governor Pritzker has also declined to enforce his executive order against protestors assembling in large 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 as 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

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

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.

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

Thus, houses of worship and politically allied protestors are granted favored status, while the political party aligned against the governor is barred from meeting. As the 2020 general election marches inexorably closer every day, the Party must act now to vindicate its rights and ensure its maximum effectiveness in the months before voting begins.

STANDARD OF REVIEW

The Court of Appeals for the Seventh Circuit has established a two-stage test for the issuance of a temporary restraining order (TRO) and preliminary injunction. 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 the Illinois Republican Party has made the requisite showings, and that the balance of harms favors their request.

ARGUMENT

The Court should issue a TRO and preliminary injunction enjoining the Governor from enforcing Executive Order 2020-38. The Party 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. The Party 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)).

Here, the party seeks to advance its mission in the five months leading up to the 2020 general election, which is the crucial time when the need for in-person organizing and outreach is at its zenith. *See McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 347 (1995) (“That this advocacy occurred in the heat of a controversial referendum vote only strengthens the protection afforded to Mrs. McIntyre’s expression...”). These next five months are the most important out of the entire four-year electoral cycle from the perspective of the Party.

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.

And these circumstances are particularly dire. The Party is never more active than in the months leading up to a presidential election. 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 the Party’s First Amendment rights exactly when they need them the most.

The Party asks for no damages in its complaint. It seeks only equal and fair treatment like other organizations of a similar character at the heart of the First Amendment.

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

The Party 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. The Party 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. *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. political, or Black Lives Matter vs. Republican, 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 he did so because of a constant, insistent, powerful drumbeat of popular demand and media pressure from across Illinois to restore the right of the people to gather and worship. *See, e.g.,* John Kass, "Is Pritzker's coronavirus levee about to break?," *Chi. Trib.* (May 21, 2020).⁴

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

⁴ Available online at <https://www.chicagotribune.com/columns/john-kass/ct-coronavirus-illinois-churches-kass-20200521-o2pk6tvcprhwvblo5mvfntuwoa-story.html> ("Pritzker allowed worship services but imposed social distancing guidelines and limited the free exercise of religion to only 10 or fewer people at a time. The people are pushing back. The pressure builds like a rain-swollen river pushing on a levee.").

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

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



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-bifn4ekl6bewdhxtujmdplkfa-story.html>.

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/>.

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 in opposition to his policies and political machine. 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 the Party 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 political parties. Fighting a pandemic is clearly a compelling state interest, *see Jacobson v. Massachusetts*, 197 U.S. 11 (1905), but the government must still meet 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: A political party caucus is no more likely to spread COVID-19 than a church service, and a political party 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, political parties are not. Political parties exist alongside churches and protestors “at the very heart of the freedom of assembly and association.” *Cousins v. Wigoda*, 419 U.S. 477, 491 (1975) (Rehnquist, J., concurring). And their speech about politics and public affairs “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). 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).

Political parties and houses of worship are “entities of similar character” that are entitled to similar treatment. See *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 48 (1983). See also *Correa-Martinez v. Arrillaga-Belendez*, 903 F.2d 49, 57 (1st Cir. 1990); *IDK, Inc. v. Cty. of Clark*, 836 F.2d 1185, 1195 (9th Cir. 1988); *Communist Party of U.S. v. United States*, 384 F.2d 957, 963 n.9 (D.C. Cir. 1967) (listing churches and political parties as similar under the First Amendment).

Under the executive order, 100 people may go to a church, sit inside in rows of chairs, shake sanitized hands at the passing of the peace, and listen to a 20-minute homily about faith, sandwiched between announcements and the singing of hymns. But the same 100 people may not go to a hotel ballroom, sit inside in rows of chairs, shake sanitized hands before the event begins, and listen to a 20-minute speech about politics, sandwiched between announcements and the singing of God Bless America. 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 farm field, loft homemade posters, listen to speakers talk about free enterprise, and wave

Trump 2020 signs. Again, the only 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 political parties the favored status currently conferred on churches and protestors, even though they all exist at the heart of the First Amendment.

B. The Party 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 Department 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. The Party 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, the Party 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). 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 enforced.

CONCLUSION

The harm suffered by the Illinois Republican Party is immediate and irreparable, monetary damages are inadequate to resolve its injury, and it is very likely to succeed on its complaint. Further, the Party and the public will suffer a substantial harm by the squelching of political discourse in the state in the months preceding a general election. The Illinois Republican Party respectfully requests that its motion be granted.

Dated: June 15, 2020

Respectfully Submitted,

ILLINOIS REPUBLICAN PARTY

**WILL COUNTY REPUBLICAN
CENTRAL COMMITTEE**

**SCHAUMBURG TOWNSHIP
REPUBLICAN ORGANIZATION**

NORTHWEST SIDE GOP CLUB

By: /s/ Daniel R. Suhr

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Attorneys for Plaintiffs

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

<p>ILLINOIS REPUBLICAN PARTY, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</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 Joseph C. Folisi</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:

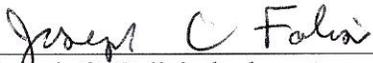
1. I am a resident of the Township of Schaumburg (the “Township”), Cook County, Illinois.
2. I am the duly elected Republican Township Committeeman of the Township and the Chairman of the regular Republican organization of the Township, which is a state political committee called the Schaumburg Township Republican Organization.
3. As the Republican organization for the Township of Schaumburg, our Organization is responsible for reaching over 100,000 residents of Schaumburg, Roselle, Hoffman Estates, Elk Grove Village, Hanover Park, Rolling Meadows, and Streamwood with our Republican message in order to elect our Republican candidates.
4. I have been a resident of Schaumburg for forty plus years, and am a former elected trustee of the Township.
5. Each summer our organization hosts a member picnic in July to help our members connect with one another and our candidates. We typically have several dozen people

attend. We cannot go forward with our picnic in July this year because of the Governor's ban on group gatherings.

6. As Committeeman, one of my responsibilities each year is to participate in the Illinois Republican Party's state convention. This year I am a delegate, but the convention will be held only online via Zoom because of the Governor's ban on group gatherings. An online convention is not as effective at creating in-person connections and collaborations across units, which is one of the primary functions of the convention from my vantage.
7. Our Organization's leadership team meets once a month to plan events, budget funds, and stay on track for our activities. Due to the Governor's ban on group gatherings, we have been doing these meetings via Zoom the past several months. The Zoom meetings are a poor substitute for in-person, direct conversations to work through sometimes tough but important issues.
8. Usually, our election activities include a number of undertakings that involve groups of ten or more gathering, which we cannot do under the Governor's ban. These include phone banks, rallies, and meet-the-candidate coffees or socials. To fund these activities, we host receptions or other events with a per-ticket price to support our party. All of these events are currently impossible because of the Governor's ban on group gatherings. Our inability to undertake them in the coming months will severely hamper our ability to organize and engage our voters for November.

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

Dated: June 12, 2020



Joseph C. Folisi, declarant

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

<p>ILLINOIS REPUBLICAN PARTY, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>J.B. PRITZKER,</p> <p style="text-align: center;">Defendant.</p>	<p>No.</p> <p style="text-align: center;">Declaration of George Pearson</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:

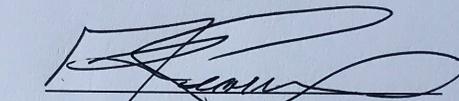
1. I am a resident of Monee, Will County, Illinois.
2. I am the chairman of the Will County Republican Central Committee.
3. As the Republican organization for Will County, our Committee is responsible for reaching 440,000 plus registered voters spread across 307 precincts in 24 townships with our Republican message in order to elect our Republican candidates.
4. Each spring our Committee hosts a Lincoln Day Dinner to honor Illinois' greatest contribution to our nation, Republican president Abraham Lincoln. Last year our Dinner in May 2019 drew a record crowd to hear economist and author Stephen Moore discuss President Trump's economic agenda. This year we were not able to hold the dinner because of the Governor's ban on group gatherings.
5. As chairman, one of my responsibilities each year is to participate in the Illinois Republican Party's state convention. This year I am a delegate, but the convention will be held only online via Zoom because of the Governor's ban on group gatherings. An

online convention is not as effective at creating in-person connections and collaborations across counties, which is one of the primary functions of the convention from my vantage.

6. Our Committee meets once a month to plan events, budget funds, and stay on track for our activities. Due to the Governor's ban on group gatherings, we have been doing these meetings via Zoom the past several months. The Zoom meetings are a poor substitute for in-person, direct conversations to work through sometimes tough but important issues.
7. Our Committee originally had planned to host a Juneteenth Day celebration on June 19, but decided to cancel it because of the Governor's ban on group gatherings. We are now planning a July 4 celebration. We are working with a local farmer to host it on his property in order to have ample room for people to maintain safe distances while still participating in a fun, outdoor event with speakers, food, and hopefully fireworks.
8. This July 4 celebration will be the kickoff for our push to the election in November 2020. We plan to undertake a number of election-oriented activities to deliver victory for our Republican candidates for local, state, and federal offices.
9. Usually, our election activities include a number of undertakings that involve groups of ten or more gathering, which we cannot do under the Governor's ban. These include phone banks, rallies, meet-the-candidate coffees or socials, and press conferences. To fund these activities, we host receptions or other events with a per-ticket price to support our party. All of these events are currently impossible because of the Governor's ban on group gatherings. Our inability to undertake them in the coming months will severely hamper our ability to organize and engage our voters for November.

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

Dated: June 10, 2020



George Pearson, declarant

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

<p>ILLINOIS REPUBLICAN PARTY, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</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 Matt Podgorski</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 Chicago, Cook County, Illinois.
2. I am the chairman of the Northwest Side GOP Club.
3. As the Republican organization for the Northwest side of Chicago, our Committee is responsible for reaching registered voters in Chicago’s 38th, 39th, 41st, and 45th Wards, plus the township of Norwood Park.
4. As chairman, one of my responsibilities each year is to participate in the Illinois Republican Party’s state convention. This year I am a delegate, but the convention will be held only online via Zoom because of the Governor’s ban on group gatherings. An online convention is not as effective at creating in-person connections and collaborations across counties, which is one of the primary functions of the convention in my view.
5. Our Committee meets once a month to plan events, budget funds, and stay on track for our activities. Due to the Governor’s ban on group gatherings, these meetings have been cancelled, and we are forced to rely instead on emails and one-to-one phone calls, which

are a poor substitute for in-person, direct conversations to work through sometimes tough but important issues.

6. Between now and the November election, we are planning a number of election-oriented activities to deliver victory for our Republican candidates for local, state, and federal offices. In particular, we are enthusiastic to host a rally for 50-100 people in support of Judge Pat O'Brien, the Republican candidate for Cook County State's Attorney. We also want to host rallies supporting our candidates for state representative and state senate, both of whom are active members of our club.
7. Our club usually hosts 3 to 4 major events each year which provide the vast majority of the funds for our operations each year. This year we only held one such event in January before the Governor's ban on group gatherings went into effect, and as a result our fundraising has been severely hampered. Calls and letters are no substitute for the enthusiasm and interest generated by a speaker or the opportunity to network with new friends or gather with old ones.
8. Usually, our election activities include a number of undertakings that involve groups of ten or more gathering, which we cannot do under the Governor's ban. These include phone banks, rallies, and meet-the-candidate coffees or socials. To fund these activities, we host receptions or other events with a per-ticket price to support our party. All of these events are currently impossible because of the Governor's ban on group gatherings. Our inability to undertake them in the coming months will severely hamper our ability to organize and engage our voters for November.
9. We are a grassroots organization. We do not have the huge war chest or infrastructure to purchase TV and radio advertising. We rely on voter-to-voter, neighbor-to-neighbor

contact. This sort of volunteer-driven outreach is not only more affordable, but we believe it's more effective in delivering our message. The Governor's ban on group gatherings as small as ten makes it significantly harder for our corps of grassroots activists to engage one another and other voters in support of our candidates.

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

Dated: 6/10/2020

DocuSigned by:
Matt Podgorski
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Matt Podgorski, declarant

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

ILLINOIS REPUBLICAN PARTY, *et al.*,

Plaintiffs,

v.

J.B. PRITZKER,

Defendant.

No.

Declaration of Tim Schneider

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 Hanover Township, Cook County, Illinois.
2. I am the chairman of the Illinois Republican Party, a post which I have held since 2014. I am a former Cook County Board Commissioner and Hanover Township Trustee.
3. The Illinois Republican Party is the statewide political organization recognized by the State of Illinois and the Republican National Committee as the official entity responsible for representing one of Illinois' two major, established political parties. As the party opposed to the party that currently runs state government, our party plays a vital role as a civil-society check on the complete control of state government by the other side, demanding accountability and transparency from our state government.
4. Our mission is to elect Republicans to federal, state, and local office, and to advocate for our platform.

5. Just as the Illinois Republican Party is the official statewide partner of the Republican National Committee, the Party has local and regional units that are independent but integrated, responsible for the party's "boots on the ground" activities in their areas.
6. Every four years, the state party hosts a state convention, at which we may conduct business, elect national convention delegates, elect national officers, select presidential electors, hear speakers, and adopt our platform. As chairman, one of my responsibilities is to convene and lead our state convention. This year, we were compelled to conduct a significant portion of our convention online because of the Governor's ban on group gatherings. While we made the best of our circumstances, the fact is that an online convention is not nearly as effective at creating in-person connections and collaborations between elected officials, grassroots activists, donors, campaign and party staff, and the media, which is one of the primary goals of hosting the convention alongside its formal business.
7. As the state Republican Party, meetings of more than ten are part-and-parcel of our business. We routinely would host meetings and gatherings of more than ten at our state headquarters, offices, or other meeting spaces. Such meetings include formal gatherings, such as a meeting of all our county party chairmen or a formal session of our State Central Committee (with one representative from each of the state's 18 congressional districts), or informal gatherings of our state and federal elected officials, campaign staff and consultants, grassroots activists and donors.
8. Events are also a major part of our business. This includes fundraising receptions or house parties that sell per-ticket events to meet and hear from major state and national leaders. It also includes rallies, bus tours, and similar grassroots and public events that

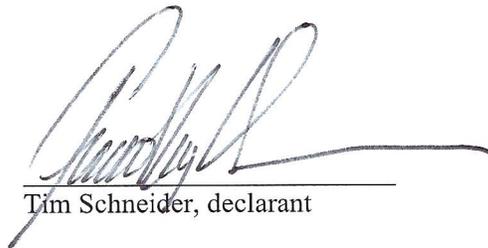
support our entire slate of Republican candidates up and down the ticket. The party also conducts numerous training sessions that equip grassroots activists, local party leaders, and candidates with the tools they need to organize and win.

9. Due to the Governor's ban on group gatherings, many of our meetings and events are suspended indefinitely through Election Day on November 3, 2020.
10. The inability to meet, gather, and hold events is a huge burden on our ability to succeed as a party. Because gatherings of ten or more are integral to our operations, a ban on these gatherings creates a major barrier to our continued operations.
11. Moreover, the ban severely limits in-person contact. In my judgment and experience as state party chair and as a previously elected official, there is no better way to convince a voter to support a candidate or cause than an in-person connection, whether through a door-knock in a neighborhood or, failing that, attendance at a rally or other event where the voter can size the candidate up, hear him directly, perhaps ask a question or make a comment, and shake a hand.
12. That said, in-person contact can be limited and managed in ways that are safe and responsible amidst the current COVID-19 situation. Tables at a fundraising dinner, TV crews at a press conference, or stations at a phone bank can be spaced six feet apart. Meals at that fundraising dinner can be served plated rather than buffet-style. Staff can be required and attendees can be encouraged to wear masks. Hand sanitizer can be provided for all employees and attendees. High-touch surfaces can be regularly sanitized. In short, the Party would observe recommended best practices while still engaging in the in-person gatherings that are essential to our efforts.

13. This ban is especially problematic for two additional reasons. First, November 3, 2020, is the most important day for our party in a four-year cycle. There is nothing like a presidential election to motivate donors, activists, and voters to engage. These next five months are the most vital of the 48 months in this cycle. Political activity and engagement during this time period is at its zenith.
14. Second, our Party as an institution is absolutely critical to generating public attention to our candidates and issues because the other party currently controls all of the levers of state government. The Governor can meet with his cabinet or senior advisors, and the Speaker can meet with his staff or caucus, and all of this is exempted from the order as government business (see Executive Order 2020-38, 2.j.c.). But the opposition party cannot hold a meeting of its central committee because of the Order's ban on gathering on ten or more. This fundamental unfairness between the two sides results in an organizing and media imbalance that only reinforces the status quo power structure.
15. Immediate relief is necessary so that we can organize effectively and without undue restraint in these crucial months immediately preceding the 2020 presidential election.

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



Tim Schneider, declarant