

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
NORTHERN DIVISION**

Blong Yang, )  
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Jay Schroeder, )  
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Paul Martin Driftmier, Sr., )  
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)  
Angela Ray Haug, )  
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Kelly Lynn McElwain, )  
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Rev. Daniel Jay Quakkelaar, )  
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)  
Madison Marie Elmer, )  
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Eric Thomas Skelton, )  
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Sandra K. Morris, )  
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Cindy Werner, )  
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Alexandra Carney Schweitzer, )  
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Case No. 1:20-CV-760

Jestin Korleski, )  
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Jaime Lynn Westcomb, )  
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Jenny Leigh Turkelson, )  
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Anna Alethia Manning, )  
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William Nauta, )  
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Lenae Lenore Gilbertson, )  
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Lisa Binning, )  
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Darcy Bloom, )  
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Gayelynn Plaster, )  
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Elizabeth Thorne, )  
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Luis A. Vergara, )  
)  
)  
Cecelia Sanchez, )  
)  
)  
and )

Mary Magdalen Moser, )  
)  
Plaintiffs, )  
)  
)  
)  
v. )  
)  
)  
Susan Powers, )  
individually and in her capacity as )  
Door County Health Officer, )  
)  
)  
Mary Dorn, )  
individually and in her capacity as )  
Outagamie County Public Health Officer, )  
)  
)  
Douglas Gieryn, )  
individually and in his capacity as )  
Winnebago County Health Officer, )  
)  
)  
Kurt Eggebrecht, )  
individually and in his capacity as )  
City of Appleton Health Officer, )  
)  
)  
Greg Peterson, )  
individually and in his capacity as )  
Chief of the Town of Grand Chute )  
Police Department, )  
)  
)  
Daniel Blackdeer, )  
individually and in his capacity as )  
the Deputy Chief of the )  
Wisconsin State Capitol Police, )

Janel Heinrich, )  
individually and in her capacity as )  
Public Health Officer of Madison )  
and Dane County, )  
)  
)

Marie-Noel Sandoval, )  
individually and in her capacity as )  
Rock County Health Officer, )  
)  
)

RoAnn Warden, )  
individually and in her capacity as )  
Green County Public Health Officer, )  
)  
)

Dottie-Kay Bowersox, )  
individually and in her capacity as )  
City of Racine Public Health Director, )  
)  
)

Jeanette Kowalik, )  
individually and in her capacity as )  
City of Milwaukee )  
Commissioner of Health, )  
)  
)

Sanjib Bhattacharyya, )  
individually and in the capacity of )  
City of Milwaukee Special Deputy )  
Health Commissioner, )  
)  
)

David Beth, )  
individually and in his capacity as )  
Kenosha County Sheriff, )  
)  
)

Joseph Cardamone, III )  
individually and in his capacity as )  
Kenosha County Corporation Counsel, )  
) )  
) )  
Jody Ward, )  
individually and in his capacity as )  
Chief of Police of the City of )  
Wisconsin Dells, )  
) )  
) )  
Dean M. Smith, )  
individually and in his capacity as )  
Chief of Police of the Oshkosh )  
Police Department, )  
) )  
) )  
Anthony S. Evers, )  
individually and in his capacity as )  
Governor of the State of Wisconsin, )  
) )  
) )  
and )  
) )  
) )  
Andrea Palm, )  
individually and in her capacity as the )  
Secretary (designee) of the )  
Wisconsin Department of Health Services )  
) )  
) )  
Defendants. )

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**AMENDED COMPLAINT FOR DECLARATORY RELIEF,  
TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT  
INJUNCTIVE RELIEF, AND DAMAGES**

PLAINTIFFS Blong Yang, Jay Schroeder, Paul Martin Driftmier, Sr., Angela Ray Haug, Kelly Lynn McElwain, Rev. Daniel Jay Quakkelaar, Madison Marie Elmer, Eric Thomas Skelton, Sandra K. Morris, Cindy Werner, Alexandra Carney Schweitzer, Jestin Korleski, Jaime Lynn Westcomb, Jenny Leigh Turkelson, Anna Alethia Manning, Lenae Lenore Gilbertson, William Nauta, Lisa Binning, Darcy Bloom, Gayelynn Plaster, Elizabeth Thorne, Mary Magdalen Moser, Luis A. Vergara, and Cecelia Sanchez now sue

DEFENDANTS Susan Powers, individually and in her capacity as Door County Health Officer; Mary Dorn, individually and in her capacity as Outagamie County Public Health Officer; Douglas Gieryn, individually and in his capacity as Winnebago County Health Officer; Kurt Eggebrecht, individually and in his capacity as City of Appleton Health Officer; Greg Peterson, in his capacity as Chief of the Town of Grand Chute Police Department; Janel Heinrich, individually and in her capacity as Public Health Officer of Madison and Dane County; Daniel Blackdeer, in his capacity as the Deputy Chief of the Wisconsin State Capitol Police; Marie-Noel Sandoval, individually and in her capacity as Rock County Health Officer; RoAnn Warden, individually and in her capacity as Green County Public Health Officer; Dottie-Kay Bowersox, City of Racine Public Health Director; Jeanette Kowalik, individually and in her capacity as City of Milwaukee Commissioner of Health; Sanjib Bhattacharyya, Individually and in the capacity of City of Milwaukee Special Deputy Health Commissioner; David Beth, individually and in his capacity as Kenosha County Sheriff; Joseph Cardamone, III, individually and in his capacity as Kenosha County Corporation Counsel; Jody Ward, individually and in his capacity as Chief of Police of the City of Wisconsin Dells; Dean M. Smith, individually and in his capacity as Chief of Police of the Oshkosh Police Department; Anthony S. Evers,

individually and in his official capacity as Governor of the State of Wisconsin; and Andrea Palm, individually and in her official capacity as the Secretary (designee) of the Wisconsin Department of Health Services.

The Wisconsin Supreme Court has authoritatively determined that the “Stay at Home” Order of Defendant Palm, known as Emergency Order 28, is invalid. The court also has determined that COVID-19 merits a statewide response, but has passed the point of “emergency” under Wisconsin law. Despite this, the Local Defendants have issued new “Emergency” Orders that are likewise invalid.

This lawsuit asks the court to enjoin the Local Defendants from enforcing the Local Orders. The Local Orders unlawfully interfere with Plaintiffs’ rights to work and to worship, to gather and assemble, in violation of their Federal Constitutional Rights.

This Amended Complaint addresses the continuing wrongful conduct by the Defendants, and includes additional parties. Since late May, there have been widespread, mass public gatherings in cities across Wisconsin, including in cities, towns and counties at issue in this case. Defendants have rightfully “allowed” those mass public gatherings to take place in their jurisdictions because such gatherings are constitutionally protected. Yet Defendants simultaneously have placed new, discriminatory restrictions on similar, constitutionally protected activity by Plaintiffs. Defendants have demonstrated an unlawful animus to Plaintiffs’ views and have continued, under color of law, to violate the Plaintiffs’ constitutional rights.

## **PARTIES**

1. Plaintiff Blong Yang resides at 3218 E Sableridge Drive, Appleton, Wisconsin 54913, in Outagamie County. His business, Eggrolls Inc., is at 1015 Mutual Way, Appleton, Wisconsin, 54913, in Outagamie county.
2. Plaintiff Jay Schroeder resides at 1295 N. Lake Street, Neenah WI 54956, in Winnebago County. He is a candidate for the 55th Wisconsin State Assembly District representing the Town-City of Neenah, Village of Fox Crossing, Partial Towns of Clayton, Dale, Greenville, Grand Chute, and parts of the City of Appleton.
3. Plaintiff Madison Marie Elmer resides at N520 Prairie View Road, Walworth, WI 53184, in Walworth County. Ms. Elmer was the organizer of a freedom rally on April 24, 2020 at the State Capitol in Madison, Wisconsin, as well as a gathering there this May.
4. Plaintiff Paul Martin Driftmier, Sr. resides at 7910 Dairy Ridge Rd., Verona, Wisconsin 53593, in Dane County. Mr. Driftmier runs his own businesses.
5. Plaintiff Angela Ray Haug resides at 6667 Fairway Circle, Windsor WI 53598, in Dane County. She runs Hair Inspirations Salon and Spa LLC in Windsor.
6. Plaintiff Kelly Lynn McElwain resides at 2347 Effingham Way Sun Prairie, WI 53590, in Dane County. She is a salon stylist and does business in Monona, Wisconsin, also in Dane County.
7. Plaintiff Rev. Daniel Jay Quakkelaar resides at 4131 N 19th St, Milwaukee, WI 53209, in Milwaukee County. Rev. Quakkelaar is the pastor of Friend of Sinners Mission Church, 3033 N 30th St, Milwaukee WI 53210, Milwaukee County.
8. Plaintiff Eric Thomas Skelton resides at W5841 Old Argyle Rd., Monroe, Wisconsin 53566, in Green County.
9. Plaintiff Sandra K. Morris resides at 908 Belmont Avenue, Racine, Wisconsin 53405, in Racine County.
10. Plaintiff Alexandra Carney Schweitzer resides at W356 N6665 East Stonewood Drive, Oconomowoc, in Waukesha County. She runs her own business.
11. Plaintiff Jestin Korleski resides at 1901 Church Street, Beloit, Wisconsin 53511, in Rock County. He is a professional musician.
12. Plaintiff Lenae Lenore Gilbertson resides at 2270 Staborn Drive, Beloit, Wisconsin 53511, in Rock County.



13. Plaintiff Jaime Lynn Westcomb resides at 825 N Garfield Ave, Janesville, WI 53545, in Rock County.
14. Plaintiff Jenny Leigh Turkelson resides at N3909 Park Rd., Brodhead, Wisconsin 53520 in Green County.
15. Plaintiff Anna Alethia Manning resides at 2161 Effingham Way, Sun Prairie, WI 53590, in Dane County. She conducts business at a studio in Waunakee, Wisconsin, also in Dane County.
16. Plaintiff William H. Nauta resides at 288 Hemlock Drive, Washington Island, Wisconsin 54246, in Door County.
17. Plaintiff Cindy Werner resides at 8809 W. Tripoli Avenue, Milwaukee, WI 53228, in Milwaukee County. She is a candidate for United States Congress, Wisconsin's 4th U.S. Congressional District, which includes the City of Milwaukee.
18. Plaintiff Lisa A. Binning resides at 1327 Primrose Lane, Neenah WI 54956, in Winnebago County. She runs The Dog Depot Grooming Salon LLC, 1225 S. Main St, Oshkosh, WI 54902, also in Winnebago County.
19. Plaintiff Darcy Bloom resides at 1012 Race Street, Wisconsin Dells, WI 53965. She is an owner and operator of Made with Love, a retailer at 316 Broadway, Wisconsin Dells, WI 53965.
20. Plaintiff Gayelynn Plaster resides at 411 Pflaum Rd, Madison, WI 53716. She is an owner and operator of Made with Love, a retailer in Wisconsin Dells, and a participating member of a church in Cottage Grove, Wisconsin, located in Dane County.
21. Plaintiff Luis A. Vergara resides at 3003 S 45th Street, Milwaukee, WI 53219. He is the President of Desatar Ministry, with active ministries in both the City of Racine and the City of Milwaukee. Desatar operates at 1170 W. Windlake Avenue, Milwaukee, WI 53215 and 3131 Taylor Ave, Bldg 2, Racine, WI.
22. Plaintiff Cecilia Sanchez resides at 2814 S 58th Street, Milwaukee, WI 53219. She is the Chief Executive Secretary of Desatar Ministry with active ministries in both the City of Racine and the City of Milwaukee.
23. Plaintiff Elizabeth Thorne resides in Dane County and runs Touch of Pilates at 2960 Triverton Pike Dr., Fitchburg WI 53711. Plaintiff Thorne provides essential health and pain management services through Touch of Pilates.

24. Plaintiff Mary Magdalen Moser resides at 2106 73rd St., Kenosha, WI 53143, in Kenosha County. She maintains a business there, Mary Magdalen's Temple of Art.
25. Defendant Susan Powers is the Door County Health Officer. Her address is 421 Nebraska St, Sturgeon Bay, WI 54235.
26. Defendant Mary Dorn is the Outagamie County Public Health Officer. Her address is 320 S Walnut St, Appleton, WI 54911.
27. Defendant Douglas Gieryn is the Winnebago County Health Officer. His address is 112 Otter Ave, Second Floor, Oshkosh, WI 54903.
28. Defendant Kurt Eggebrecht is the City of Appleton Health Officer. His address is 100 N Appleton St, Appleton, WI 54911.
29. Defendant Janel Heinrich is the Public Health Officer of Madison and Dane County. Her address is 210 Martin Luther King Jr Blvd # 507, Madison, WI 53703.
30. Defendant Marie-Noel Sandoval is the Rock County Health Officer. Her address is 3328 US-51, Janesville, WI 53545.
31. Defendant RoAnn Warden is the Green County Public Health Officer. Her address is N3150 WI-81, Monroe, WI 53566.
32. Defendant Dottie-Kay Bowersox is the City of Racine Public Health Director. Her address is 730 Washington Ave # 1, Racine, WI 53403.
33. Defendant Jeanette Kowalik is the City of Milwaukee Commissioner of Health. Her address is at 841 N Broadway, Milwaukee, WI 53202.
34. Defendant Sanjib Bhattacharyya is the City of Milwaukee Special Deputy Health Commissioner, located at 841 N Broadway, Milwaukee, WI 53202.
35. Defendants Powers, Dorn, Gieryn, Eggebrecht, Heinrich, Sandoval, Warden, Bowersox, Kowalik and Bhattacharyya will be referred to throughout this Complaint as "the Local Defendants."
36. Defendant Greg Peterson is the Chief of the Town of Grand Chute Police Department. His address is 1900 W Grand Chute Blvd, Appleton, WI 54913.
37. Defendant Daniel Blackdeer is the Deputy Chief of the Wisconsin State Capitol Police. His address is 17 W Main St # 301, Madison, WI 53702.

38. Defendant David Beth is the Kenosha County Sheriff. His address is 1000 55th St # 1, Kenosha, WI, 53140.
39. Defendant Joseph Cardamone, III is the Kenosha County Corporation Counsel. His address is 912 56th St., Lower Level 13, Kenosha, WI 53140.
40. Defendant Jody Ward is the Chief of Police of the City of Wisconsin Dells. His address is 712 Oak Street, Wisconsin Dells, WI 53965.
41. Defendant Dean M. Smith is the Chief of Police of the Oshkosh Police Department. His address is 420 Jackson Street, Oshkosh, WI 54903.
42. Defendant Anthony S. Evers is the Governor of the State of Wisconsin. His address is 115 East Capitol Dr # 1, Madison, WI 53702.
43. Defendant Andrea Palm is the Secretary (designee) of the Wisconsin Department of Health Services. Her address is 1 West Wilson Street, Madison, WI 53703.
44. Defendant Palm, and each of the Local Defendants, are unelected officials.
45. Neither Defendant Palm, nor any of the Local Defendants, are politically accountable officials of the state.

#### **JURISDICTION AND VENUE**

46. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367.
47. This action arises under the First, Fifth and Fourteenth Amendments to the United States Constitution, and is brought pursuant to 42 U.S.C. § 1983.
48. Venue is proper in this court pursuant to 28 U.S.C. § 1391(a) and (b)(1) because all defendants are residents of this state and at least one defendant resides in the Northern Division of this District. The Northern Division is appropriate as Outagamie, Winnebago and Door Counties are all located within its bounds.
49. This Court is authorized to grant declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. § 2201-02, implemented through Rule 57 of the Federal Rules of Civil Procedure and is authorized to grant a temporary restraining order and injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

50. The Defendants have acted under color of law to violate Plaintiffs' federal constitutional rights as set forth in this complaint. Defendant Evers, Defendant Palm, and upon information and belief the Local Defendants, have acted in concert in doing so.
51. Defendants are named in their individual capacities for purposes of their personal liability for actions they have taken under color of state law, and are named in their official capacity for purposes of declaratory and injunctive relief.
52. This Court is authorized to grant Plaintiffs' prayer for relief regarding costs, including reasonable attorney's fees, pursuant to 42 U.S.C. § 1988.

### **FACTUAL BACKGROUND**

#### **Defendant Palms' Order 28; Wisconsin Legislature v. Palm, 2020 WI 42; the Local Orders.**

53. On April 16, 2020, Defendant Palm entered Emergency Order 28.
54. On May 13, 2020, Order 28 was held unlawful by the Wisconsin Supreme Court.
55. The Wisconsin Supreme Court ruled that Order 28 was unlawful and prohibited activity that Defendant Palm had no authority to prohibit.
56. The Wisconsin Supreme Court rejected Defendant Palm's attempt to "quarantine all individuals present within the State of Wisconsin by ordering them 'to stay at home or at their place of residence' with exceptions she deems appropriate." *Id.*, ¶ 28.
57. The Wisconsin Supreme Court rejected Defendant Palm's attempt to prohibit "all public and private gatherings of any number of people that are not part of a single household or living unit" because Defendant Palm has no power to issue any directive that "is not based on persons infected or suspected of being infected." *Id.*, ¶ 48.
58. The Wisconsin Supreme Court rejected Defendant Palm's attempt to use broadly worded provisions in the Wisconsin Statutes governing "Communicable Diseases" (Chapter 252) to justify the broad restrictions set forth in Order 28. *Id.*, ¶¶ 43, 45, 48, 49, 50.
59. According to Chapter 252 of the Wisconsin Statutes, the Department of Health Services "may close schools and forbid public gatherings in schools, churches, and other places to control outbreaks and epidemics." Wisconsin Statutes § 252.02(3); § 250.01(3).
60. According to Chapter 252 of the Wisconsin Statutes, a local health officer "may forbid public gatherings when deemed necessary to control outbreaks or epidemics and shall advise the department of measures taken." Wisconsin Statutes § 252.03(2).

61. The Wisconsin Statutes do not give Defendant Palm, or the Local Defendants, authority to forbid private gatherings, or to otherwise regulate public gatherings.
62. The Wisconsin Supreme Court declared that an unelected official does not have the authority to create law applicable to all people in her jurisdiction, or to promulgate a rule of general application in that jurisdiction. That “kind of controlling, subjective judgment asserted by one unelected official” cannot be “imposed in Wisconsin.” *Id.*, ¶¶ 1, 24, 28.
63. The Wisconsin Supreme Court rejected the notion that Wisconsin law allows “emergency” powers and orders to continue “month after month.” The court held that while the government can act at the time of an emergency because there is no time for deliberation or debate, “in the case of an ongoing pandemic, which lasts month after month,” the government may not “rely on emergency powers indefinitely.” *Id.*, ¶ 41.
64. The Wisconsin Supreme Court held that Defendant Palms’ action was “without legal foundation and ignores more than 50 years of Wisconsin law”; constituted “obvious overreach” and amounted to a “vast seizure of power.” *Id.*, ¶ 48.
65. The Wisconsin Supreme Court held that Defendant Palm’s authority over “communicable diseases” must apply only to “those infected or suspected of being infected.” Such authority does not extend to ordering all persons to stay home, preventing all forms of travel, or closing all businesses, except where deemed “essential.” *Id.*, ¶¶ 49-50.
66. The Wisconsin Supreme Court rejected the notion that a public health crisis could be an occasion to restrict individual liberties: “individual rights secured by the Constitution do not disappear during a public health crisis. These individual rights, including the protections in the Bill of Rights made applicable to the states through the Fourteenth Amendment, are always in force and restrain government action.” *Id.*, ¶ 53.
67. Subsequently, the Local Defendants entered new Local Orders which are substantially similar and in many instances use verbatim language regarding the activity prohibited and the people whose activities are declared “non-essential.” Throughout this complaint these orders will be referred to collectively as “the Local Orders.”
68. Despite the Wisconsin Supreme Court rejection of ongoing use of “emergency” powers, certain Local Orders continue to purport to address a state of “emergency,” go on for “month after month,” and have no end date.
69. The Local Orders are substantially similar in scope to Order 28, and in some cases incorporate all or part of Order 28.

70. In some cases, Local Defendants have continued, modified, supplemented or rescinded the Local Orders.
71. In some cases, the Local Defendants have indicated an intention to reinstate or replace the Local Orders.
72. For example, Outagamie County entered a Local Order on May 14, 2020, but subsequently rescinded it.
73. The Outagamie County Executive wrote an undated letter to the Wisconsin Attorney General regarding the Local Orders. *See* Exhibit, Undated Letter from Outagamie County Executive to Attorney General Kaul.
74. A letter response to the Outagamie County Executive providing “guidance” was issued within approximately 24 hours, on May 15, 2020. *See* Exhibit, Wisconsin OAG, 03-20.
75. The May 15, 2020 letter opinion stated: “The foregoing observations provide immediate guidance in light of the pandemic. Because of the emergency circumstances, this opinion is not being released according to this office’s ordinary process.” *Id.*
76. By equating the pandemic with the legal concept of “emergency,” the May 15, 2020 letter opinion, and the actions it commends to the Local Defendants, runs contrary to the decision of the Wisconsin Supreme Court in *Wisconsin Legislature v. Palm*, 2020 WI 42.
77. The Local Orders purport to continue under a state of “emergency” and reinstate versions of the same unlawful restrictions put in place by Defendant Palm in Order 28.
78. Despite the Wisconsin Supreme Court clear statement that the “Communicable Diseases” statutes must apply only to “those infected or suspected of being infected,” the Local Orders continue to purport to quarantine and limit those who are not “infected or suspected of being infected.”
79. Despite the Wisconsin Supreme Court rejection of ongoing use of “emergency” powers, certain Local Orders continue to purport to address a state of “emergency,” go on for “month after month,” and have no end date.
80. In some cases, Local Defendants have continued, modified, supplemented or rescinded the Local Orders.
81. In some cases, Local Defendants have indicated an intention to reinstate or replace the Local Orders.

82. The Local Orders have been put in place, modified, supplemented, changed, rescinded, or reinstated from day to week to month.
83. As demonstrated by the adoption, modification, change, rescission, and reinstatement of these orders, the wrongful conduct of the Defendants is capable of repetition, yet evading review.

**Order 28 and the Local Orders Harm the Plaintiffs.**

84. Plaintiff Blong Yang runs a restaurant, Eggrolls Inc., in Appleton, in Outagamie County, Wisconsin. Through Order 28 and under color of law, Defendant Palm and Defendant Peterson violated his constitutional rights. Through the Local Orders and under color of law, the Local Defendants have continued to violate those rights.
85. On May 13, 2020, an officer from the Grand Chute Police Department arrived at Mr. Yang's restaurant. The restaurant specializes in Hmong Eggrolls and was suffering as a result of Order 28.
86. Mr. Yang previously informed the Grand Chute Police Department, which has jurisdiction over the location, that he would open his restaurant for dining, despite the unlawful Order 28 issued by Defendant Palm.
87. A Grand Chute Police Department Officer informed Mr. Yang that if he kept his business open for dining, he would face potential criminal charges, imprisonment, and the possible loss of his business license.
88. At the same time that Mr. Yang was threatened with imprisonment for opening his restaurant, Defendants allowed the Walmart Store next to the restaurant to sell food touched by multiple people and handpicked prior to consumption. At the Walmart next to Mr. Yang's restaurant, customers were free to buy an apple, a pear, a cucumber, or a mango that was touched by countless and unknown other shoppers and employees. Other than a purchase, nothing prevented the consumption of that food prior to home arrival.
89. Plaintiff Jay Schroeder resides in Neenah in Winnebago County. He is a candidate for the Wisconsin State Assembly, District 55. Through Order 28 and under color of law, Defendant Palm violated his constitutional rights. Through the Local Orders and under color of law, the Local Defendants have continued to violate those rights.
90. Plaintiff Madison Marie Elmer resides in Walworth, in Walworth County. Through Order 28 and under color of law, Defendant Palm and Defendant Blackdeer violated her constitutional rights. Through the Local Orders and under color of law, the Local Defendants have continued to violate those rights.

91. Together with other Wisconsin residents, Ms. Elmer attempted to exercise her First Amendment right to peaceably assemble. She planned to gather on April 24, 2020 at the State Capitol in Madison and submitted a permit request on April 14, 2020.
92. Citing Defendant Palm's Order 28, Defendant Blackdeer denied the permit request. Defendant Blackdeer's denial indicated that Defendant Palm's Order 28 prohibited the gathering, and threatened Ms. Elmer and anyone else who gathered with up to 30 days imprisonment.
93. Even after the Wisconsin Supreme Court declared Defendant Palm's Order 28 invalid, Defendant Blackdeer once again denied Ms. Elmer's request for a permit to peaceably assemble with other Wisconsin residents at the State Capitol. Ms. Elmer sought a permit to "peacefully, responsibly and respectfully" gather "for Worship, Prayer, short sermon and to celebrate Pentecost" at the State Capitol on May 30, 2020.
94. Despite Ms. Elmer having made a timely permit application, Defendant Blackdeer held the permit request for eight (8) days prior to attempting to impose additional obligations on Ms. Elmer that have not been imposed on other, similar mass gatherings in Madison or Dane County.
95. Defendant Blackdeer waited until one (1) business day prior to the planned gathering before he denied the permit request, making an administrative review or appeal impossible. The administrative appeal process required that Defendant Blackdeer allow at least three business days for review and appeal, which Defendant Blackdeer failed to do.
96. While Ms. Elmer did gather with others in Madison on April 24 and May 30, 2020, others did not as a result of the actions of Defendants Palm and Blackdeer. Others who hoped or planned to gather did not do so as a result of the actions and the threats of Defendants Palm and Blackdeer.
97. While Defendant Blackdeer denied Ms. Elmer's new request for a permit for May 30, 2020, Defendant Evers and the spokesperson for Defendant Palm publicly acknowledged that other persons must be allowed to exercise their First Amendment rights.
98. Plaintiff Paul Martin Driftmier, Sr. resides in Verona, in Dane County. He runs his own businesses. Through Order 28 and under color of law, Defendant Palm violated his constitutional rights. Through the Local Orders and under color of law, the Local Defendants have continued to violate those rights.
99. Plaintiff Angela Ray Haug resides in Windsor, in Dane County. She is a stylist with a salon in Dane County. Through Order 28 and under color of law, Defendant Palm



violated her constitutional rights and damaged her business. Through the Local Orders and under color of law, the Local Defendants have continued to do so.

100. Plaintiff Kelly Lynn McElwain resides in Sun Prairie, in Dane County. She is a stylist with a salon in Monona, also in Dane County. Through Order 28 and under color of law, Defendant Palm violated her constitutional rights and damaged her business. Through the Local Orders and under color of law, the Local Defendants have continued to do so.
101. Plaintiff Rev. Daniel Jay Quakkelaar resides in the City of Milwaukee. He is the pastor of Friend of Sinners Mission Church. Through Order 28 and under color of law, Defendant Palm violated his constitutional rights. Through the Local Orders and under color of law, the Local Defendants have continued to do so.
102. Plaintiff Eric Thomas Skelton resides in Monroe, in Green County. He takes part in home worship gatherings with others who are not members of his household, which Order 28 barred him from doing. Through Order 28 and under color of law, Defendant Palm violated his constitutional rights. Through the Local Orders and under color of law, the Local Defendants have continued to do so.
103. Plaintiff Sandra K. Morris resides at 908 Belmont Avenue in Racine, in Racine County. Through Order 28 and under color of law, Defendant Palm violated her constitutional rights. Through the Local Orders and under color of law, the Local Defendants have continued to do so.
104. Plaintiff Alexandra Carney Schweitzer resides in Oconomowoc, in Waukesha County. Through Order 28 and under color of law, Defendant Palm violated her constitutional rights. Through the Local Orders and under color of law, the Local Defendants have continued to do so.
105. Plaintiff Jestin Korleski resides in Beloit, in Rock County. He is a musician. Order 28 shutdown all of the businesses at which he performed and damaged his business. Through Order 28 and under color of law, Defendant Palm violated his constitutional rights. Through the Local Orders and under color of law, the Local Defendants have continued to do so.
106. Plaintiff Lenae Lenore Gilbertson resides in Beloit, in Rock County. Through Order 28 and under color of law, Defendant Palm violated her constitutional rights. Through the Local Orders and under color of law, the Local Defendants have continued to do so.

107. Plaintiff Jaime Lynn Westcomb resides in Janesville, in Rock County. Through Order 28 and under color of law, Defendant Palm violated her constitutional rights. Through the Local Orders and under color of law, the Local Defendants have continued to do so.
108. Plaintiff Jenny Leigh Turkelson resides in Brodhead, in Green County. Through Order 28 and under color of law, Defendant Palm violated her constitutional rights. Through the Local Orders and under color of law, the Local Defendants have continued to do so.
109. Plaintiff Anna Alethia Manning resides in Sun Prairie, in Dane County. She conducts business at a studio in Waunakee, Wisconsin, also in Dane County. Through Order 28 and under color of law, Defendant Palm violated her constitutional rights and damaged her business. Through the Local Orders and under color of law, the Local Defendants have continued to do so.
110. Plaintiff William Nauta resides on Washington Island in Door County. Through Order 28 and under color of law, Defendant Palm violated his constitutional rights. Through the Local Orders and under color of law, the Local Defendants have continued to do so.
111. Plaintiff Cindy Werner resides at 8809 W. Tripoli Avenue, Milwaukee, WI 53228, in Milwaukee County. Through Order 28 and under color of law, Defendant Palm violated her constitutional rights. Through the Local Orders and under color of law, the Local Defendants have continued to do so.
112. Plaintiff Lisa A. Binning resides at 1327 Primrose Lane, Neenah WI 54956, in Winnebago County. She runs The Dog Depot Grooming Salon LLC, 1225 S. Main St, Oshkosh, WI 54902, also in Winnebago County. Through Order 28 and under color of law, Defendant Palm and Defendant Smith violated her constitutional rights and damaged her business. Through the Local Orders and under color of law, the Local Defendants have continued to do so.
113. Plaintiff Binning has been in the dog grooming business for 25 years. For a period of time during the pendency of Defendant Palm's Order 28, she operated her business according to the personal distancing and curbside rules then in effect.
114. On or about April 27, 2020, the Winnebago County Health Department revoked Ms. Binning's operating license. The license was later reinstated.
115. On April 27, 2020, Ms. Binning, based on Defendant Palm's unlawful order, was arrested by officers from the Oshkosh Police Department for operating her business. She was booked, held in a jail cell, and threatened with criminal prosecution. To date, she has not been charged with any crime.

116. Plaintiffs Darcy Bloom and Gayelynn Plaster own and operate “Made with Love,” a retailer in Wisconsin Dells, Wisconsin. Ms. Bloom resides in the Dells and Ms. Plaster resides in Madison. Through Order 28 and under color of law, Defendant Palm violated their constitutional rights and damaged their business. Through the Local Orders and under color of law, the Local Defendants have continued to do so.
117. Through “Made with Love,” these Plaintiffs sell pet supplies, personal care items, personal protective equipment, gifts and certain food items, including hand soaps, lotions, clearing items, teas, jams, jerky products and face masks.
118. For a period of time during the pendency of Defendant Palm’s Order 28, “Made with Love” operated according to the personal distancing and increased hygiene standards then in effect.
119. On April 24, 2020, “Made with Love” was visited by Wisconsin Dells Chief of Police Jody Ward. Chief Ward directed Plaintiff Bloom to close the “Made with Love” store. Subsequently, Bloom was served with a cease and desist letter, and threatened with criminal prosecution.
120. Plaintiff Luis Vergara and Plaintiff Cecilia Sanchez minister in the City of Milwaukee and the City of Racine through Desatar Ministries.
121. The Local Orders by the Local Defendants prevent Vergara, Sanchez and their families from freely exercising their religion in the City of Milwaukee and the City of Racine.
122. Approximately 20 people are essential to conducting in person worship services at Desatar, in addition to any attendees.
123. According to the sincerely held religious beliefs of Vergara and Sanchez: being present in person is essential to worship; gathering in person as the body of Christ is essential to function according to the spiritual and physical needs of their members; meeting together as a church is necessary to actively reciprocate with their fellow believers and to minister personally to their needs; the word “church” comes from the word "ekklesia," an assembly of the body of believers as both the people of God and the place where the people of God gather together.

124. At various points in time, Vergara and Sanchez have had as many as 14 people residing in the same household. Other households that attend services at one of these churches have as many as 9 persons. Order 28 effectively banned these families from freely exercising their religion by requiring that any religious gathering “shall include fewer than 10 people.” With their own households present, that limitation effectively barred Vergara and Sanchez from gathering with even the smallest families. Certain Local Orders have had the same wrongful effect.
125. Plaintiff Elizabeth Thorne resides in Dane County and runs Touch of Pilates in Fitchburg. Through Touch of Pilates, Plaintiff Thorne provides essential health and pain management services. Through Order 28 and under color of law, Defendant Palm violated her constitutional rights and damaged her business. Through the Local Orders and under color of law, the Local Defendants have continued to do so.
126. Due to Order 28, Plaintiff Thorne was unable to operate her business. Due to the Local Order of Defendant Heinrich, Thorne continued to be prohibited or restricted from operating that business and from letting workspace available at Touch of Pilates to other service providers.
127. Plaintiff Mary Magdalen Moser is a Kenosha County resident and the proprietor of Mary Magdalen’s Temple of Art. Through Order 28 and under color of law, Defendant Palm violated her constitutional rights and damaged her business. Through the Local Orders and under color of law, the Local Defendants have continued to do so.
128. On May 5, 2020, Moser tried to attend a public, in-person meeting of the Kenosha County Board of Supervisors. She was refused entry by Defendant Beth’s deputies. She was arrested as she attempted to gain entry to the public, in-person meeting. Upon information and belief, Moser’s arrest was made at the direction of Defendants Beth and Cardamone. The arrest was made without lawful authority.
129. On May 5, 2020, Moser was issued two citations as a result of her attempt to enter the public, in-person meeting of the Kenosha County Board of Supervisors. The citations state fines totalling \$1,535.00.

**Order 28 and the Local Orders unlawfully hamper, restrict or impair the right of recall.**

130. Since the entry of Defendant Palm’s Order 28, some of the Plaintiffs have wished to circulate recall petitions for either state or local office holders. This includes Plaintiffs Morris, McElwain, Gilbertson, Turkelson, Schweitzer, Manning, Nauta and Moser.

131. Order 28 and the Local Orders have imposed a substantial burden on the right to engage in person to person political discourse and to circulate recall petitions.
132. The right to recall is a constitutional right in the State of Wisconsin. *See* Wisconsin Constitution, Article XIII, Section 12. The Wisconsin Constitution provides that “no law shall be enacted to hamper, restrict or impair the right of recall.”.
133. Wisconsin law requires the collection of a number of signatures equal to 25% of the number of voters in the prior relevant election in order to proceed.
134. Wisconsin law requires that signatures be obtained in person. Signatures cannot be obtained electronically or remotely.
135. Wisconsin law requires a strict period of 60 days within which to circulate petitions and obtain the required signatures.
136. Collecting the minimum number of signatures within the 60 day time period was made impossible by Defendant Palm’s Order 28, and would be an effort unlawfully “hamper[ed], restrict[ed] or impair[ed]” by the Local Orders.
137. Order 28 and the ongoing modification, supplementation, change, rescission, and reimplementation of the Local Orders have unlawfully “hamper[ed], restrict[ed] or impair[ed] the right to recall” in violation of Article XIII, Section 12 of the Wisconsin Constitution.

**Order 28 and the Local Orders unlawfully restrict the free exercise of religion.**

138. Prior to Defendant Palm’s Order 28, certain Plaintiffs attended organized church services; some freely exercised their religion by gathering in their homes with non-family members to pray or worship; some practiced no religion at all.
139. For those Plaintiffs who wished to participate in religious gatherings, Order 28 and the Local Orders have prevented the free exercise of religion. This includes Plaintiffs Yang, Schroeder, Driftmier, Haug, Quakkelaar, Skelton, Morris, Schweitzer, Korleski, Gilbertson, Westcomb, Turkelson, Werner, Nauta, Plaster, Thorne, Moser, Vergara and Sanchez.
140. Order 28 and the Local Orders have allowed only certain organized religious entities to hold religious gatherings. Plaintiffs and others who wished to hold private religious gatherings of non family members in their own homes -- a prayer group, a Bible study, a Passover Meal, an Easter Celebration -- are or were prohibited or restricted.

**Defendants have engaged in unlawful viewpoint discrimination.**

141. Defendants have engaged in unlawful viewpoint discrimination by affirmatively allowing certain mass gatherings to be held at similar times, in similar places, and in a similar manner as other mass gatherings that Defendants prohibit Plaintiffs from holding.

142. Defendants continue to restrict Plaintiffs' rights but have allowed other mass gatherings similar in time, place and manner; with numbers of people far in excess of the limits that the Defendants have placed on Plaintiffs; involving people gathering in close quarters, at times involving singing and chanting. For example, see the following public reports:

<https://www.cbs58.com/news/area-coronavirus-testing-sites-are-seeing-a-decrease-in-people-getting-tested-leaving-doctors-concerned>

<https://www.jsonline.com/story/news/2020/05/30/madison-protest-george-floyd-death-capitol-could-see-thousands/5289309002/>

<http://www.milwaukeeindependent.com/featured/thousands-march-from-bay-view-to-downtown-in-justice-for-george-floyd-peaceful-protest/>

<https://www.newsbreak.com/wisconsin/madison/news/0PDaaJRQ/photos-3rd-night-of-protesting-takes-place-in-downtown-madison>

<https://urbanmilwaukee.com/2020/06/05/protesters-sing-happy-birthday-to-breona-taylor/>

[https://journaltimes.com/news/local/racine-protests-continue-with-a-prayer-of-we-need-to-cry-out-for-justice/article\\_a5e3d92f-0adc-55ff-9ea2-b1959c8afc4b.html](https://journaltimes.com/news/local/racine-protests-continue-with-a-prayer-of-we-need-to-cry-out-for-justice/article_a5e3d92f-0adc-55ff-9ea2-b1959c8afc4b.html)

143. While the Local Defendants permit other mass gatherings without regard to the number of persons attending or the closeness of those gathering, Defendant Palm and the Local Defendants have restricted Plaintiffs' rights by imposing numerical limitations that change frequently: 10, 50, 100, 200 or 250 persons; 25 percent, 50 percent or 75 percent capacity.

144. The categories, distinctions, and percentages utilized by Defendants are not based on sufficient facts or data, and are not the product of reliable principles and methods. They would not meet the standards set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) or the cases that flow from it.

145. By permitting other mass gatherings held at similar times, in similar places and in a similar manner, while threatening to punish Plaintiffs for exercising their constitutional rights, Order 28 and the Local Orders demonstrate animus, constitute viewpoint discrimination, and violate Plaintiffs' rights to the equal protection of the laws.
146. The Wisconsin Statutes state that Defendant Palm and the Local Defendants have the authority to "forbid public gatherings." Wis. Stat. §§ 252.02(3) and 252.03(2).
147. The Wisconsin Statutes do not and cannot vest Defendant Palm or the Local Defendants with any authority to forbid *private* gatherings, or to pick and choose which "public gatherings" they will allow and which they will not allow.
148. Defendant Palm prevented Plaintiffs from gathering in private, including with others inside their own homes, and the Local Defendants have continued to do so under color of law, without legal authority.
149. Order 28 violated and the Local Orders continue to violate Plaintiffs' First Amendment rights to the free exercise of religion; to peaceably assemble and petition the government for a redress of their grievances; to the freedom of speech; and to the equal protection of the laws.
150. Through Order 28 and the Local Orders, the Defendants have acted under color of law to violate Plaintiffs' federal constitutional rights, including the rights to the free exercise of religion; to peaceably assemble and petition the government for a redress of their grievances; to the freedom of speech; and the equal protection of the laws.

**COUNT I — VIOLATION OF CIVIL RIGHTS UNDER COLOR OF LAW BY DEFENDANT PALM AND BY THE LOCAL DEFENDANTS; 42 U.S.C. § 1983.**

151. The Plaintiffs hereby reallege and adopt each and every allegation in the paragraphs above.
152. Under color of law through Order 28 and the Local Orders, Defendants have deprived and are depriving Plaintiffs of their rights and privileges secured by the Constitution and the laws, including the rights to the free exercise of religion; to peaceably assemble and petition the government for a redress of their grievances; to the freedom of speech; and the equal protection of the laws.
153. Order 28 and the Local Orders, on their face and as applied, infringe Plaintiffs federal constitutional rights.

154. Defendant Palm and the Local Defendants continue to attempt to restrict the Plaintiffs' constitutional rights.
155. Order 28 and the Local Orders lack a compelling, legitimate, or rational interest in the Orders' application.
156. Even if Order 28 and the Local Orders were supported by a compelling interest (and they are not), the Orders are not the least restrictive means to accomplish the purported interest.
157. The Local Orders have been put in place, modified, supplemented, changed, rescinded, or reinstated from day to day, week to week, or month to month.
158. The ongoing modification, supplementation, change, rescission, and reinstatement of the Local Orders has the effect of frustrating the opportunity to obtain judicial review.
159. The Local Orders unlawfully prohibit constitutionally protected activity by the Plaintiffs, including by Plaintiffs who do not reside in the area purportedly covered by the Local Orders.
160. Defendants have demonstrated animus to the Plaintiffs' rights and viewpoints by continuing to restrict the Plaintiffs' activities while allowing other public mass gatherings to take place in their jurisdictions in circumstances similar in time, place and manner.
161. The Local Orders, on their face and as applied, have caused, are causing, and will continue to cause Plaintiffs immediate and irreparable harm, and actual and undue hardship.
162. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of their liberties.
163. Plaintiffs seek an immediate, temporary injunction against the Local Orders; further permanent injunctive relief against the Local Orders; and damages against all Defendants to be proven at trial.

**COUNT II — VIOLATION OF THE RIGHT TO FREE EXERCISE OF RELIGION UNDER THE FIRST AMENDMENT.**

164. The Plaintiffs hereby reallege and adopt each and every allegation in the paragraphs above.



165. The Free Exercise Clause of the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, prohibits the State from abridging Plaintiffs' rights to the free exercise of religion.
166. Plaintiffs Yang, Schroeder, Driftmier, Haug, Quakkelaar, Skelton, Morris, Schweitzer, Korleski, Gilbertson, Westcomb, Turkelson, Werner, Nauta, Plaster, Thorne, Vergara Sanchez and Moser hold sincere religious beliefs.
167. Order 28 and the Local Orders, on their face and as applied, have prohibited those Plaintiffs from the free exercise of their religions.
168. Order 28 and the Local Orders, on their face and as applied, impermissibly burden those Plaintiffs' sincerely held religious beliefs, compel Plaintiffs to either change their beliefs or to act against them, and force Plaintiffs to choose between the teachings and requirements of their sincerely held religious beliefs and the obedience of the Orders.
169. Order 28 and the Local Orders, on their face and as applied, are neither neutral nor generally applicable, but rather specifically and discriminatorily target religious beliefs, speech, and assembly.
170. Order 28 and the Local Orders, on their face and as applied, constitute a substantial burden on Plaintiffs' sincerely held religious beliefs.
171. Defendants have demonstrated animus to the Plaintiffs' sincerely held religious beliefs by continuing to restrict the Plaintiffs' activities while allowing other public gatherings to take place in their jurisdictions in circumstances similar in time, place and manner.
172. Defendants lack a compelling, legitimate, or rational interest in the Orders' application of different standards for churches and faith-based gatherings than those applicable to others.
173. Even if the restrictions on faith-based gatherings were supported by a compelling interest (and they are not), Order 28 and the Local Orders are not the least restrictive means to accomplish the purported interest.
174. Order 28 and the Local Orders, on their face and as applied, specifically target Plaintiffs' sincerely held religious beliefs and set up a system of individualized

exemptions that permits certain persons or entities to act under certain guidelines while prohibiting others from operating with similar guidelines.

175. Order 28 and the Local Orders also violate the Establishment Clause because they excessively entangle the government with religion, by deciding who may attend worship services and who may not, under what circumstances those persons may attend, and what they must do or not do at those services.
176. Order 28 and the Local Orders, on their face and as applied, have caused, are causing, and will continue to cause Plaintiffs immediate and irreparable harm, and actual and undue hardship.
177. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of their liberties by the Local Orders.
178. Plaintiffs seek an immediate, temporary injunction against the Local Orders so that they will be permitted to freely exercise their religion, to attend the church and worship services of their choice or to freely exercise their religion in their own homes with others who are not members of their household, and further permanent injunctive relief against the Orders prohibition on the free exercise of religion; and damages to be proven at trial.

**COUNT III — VIOLATION OF THE RIGHT TO FREEDOM OF ASSEMBLY UNDER THE FIRST AMENDMENT.**

179. Plaintiffs hereby reallege and adopt each and every allegation in the paragraphs above.
180. Order 28 and the Local Orders contain no allowance for public political activity, or for private, person to person political activity.
181. The First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, prohibits the State from abridging the right of the people peaceably to assemble.
182. Order 28 and the Local Orders, on their face and as applied, are an unconstitutional prior restraint on Plaintiffs' right to assemble.
183. Order 28 and the Local Orders, on their face and as applied, unconstitutionally discriminate on the basis of viewpoint.

184. Order 28 and the Local Orders, on their face and as applied, unconstitutionally discriminate on the basis of content.
185. Defendants lack a compelling, legitimate, or rational interest in the Orders' application.
186. Order 28 and the Local Orders,, on their face and as applied, are not the least restrictive means to accomplish any permissible government purpose sought to be served by the Orders.
187. Order 28 and the Local Orders, on their face and as applied, are not narrowly tailored to serve the government's purported interest.
188. Order 28 and the Local Orders, on their face and as applied, do not leave open adequate alternative channels of communication for Plaintiffs.
189. Order 28 and the Local Orders, on their face and as applied, are irrational and unreasonable and impose unjustifiable and unreasonable restrictions on Plaintiffs' constitutionally protected right to assemble.
190. Order 28 and the Local Orders, on their face and as applied, are unconstitutionally vague and overbroad as they chill and abridge the free assembly rights of Plaintiffs.
191. Defendants have demonstrated animus to the Plaintiffs by continuing to restrict the Plaintiffs' activities while allowing other mass public gatherings to take place in their jurisdictions in circumstances similar in time, place and manner.
192. On their face and as applied, the Local Orders' violation of Plaintiffs' right to free assembly have caused, are causing, and will continue to cause Plaintiffs to suffer immediate and irreparable injury and undue and actual hardship.
193. Plaintiffs have no other adequate remedy at law to correct the continuing deprivation of their liberties by the Local Orders.
194. Plaintiffs seek an immediate, temporary injunction against the Local Orders; further permanent injunctive relief against the Orders; and damages to be proven at trial.

**COUNT IV — VIOLATION OF THE RIGHT TO FREEDOM OF SPEECH UNDER THE FIRST AMENDMENT.**

195. Plaintiffs hereby reallege and adopt each and every allegation in the paragraphs above.
196. The Free Speech Clause of the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, prohibits the State from abridging Plaintiffs' freedom of speech.
197. Order 28 and the Local Orders, on their face and as applied, are an unconstitutional prior restraint on Plaintiffs' speech.
198. Order 28 and the Local Orders, on their face and as applied, unconstitutionally discriminate on the basis of viewpoint.
199. Order 28 and the Local Orders, on their face and as applied, unconstitutionally discriminate on the basis of content.
200. Defendants lack a compelling, legitimate, or rational interest in the Orders' application of different standards for exempted businesses and entities.
201. Order 28 and the Local Orders, on their face and as applied, are not the least restrictive means to accomplish any permissible government purpose sought to be served by the Orders.
202. Order 28 and the Local Orders, on their face and as applied, are not narrowly tailored to serve the government's purported interest.
203. Order 28 and the Local Orders, on their face and as applied, are irrational and unreasonable and impose unjustifiable and unreasonable restrictions on Plaintiffs' constitutionally protected speech.
204. Order 28 and the Local Orders, on their face and as applied, are unconstitutionally overbroad as they chill and abridge the free speech rights of Plaintiffs.
205. Defendants have demonstrated animus to the Plaintiffs by continuing to restrict the Plaintiffs' activities while allowing other mass public gatherings to take place in their jurisdictions in circumstances similar in time, place and manner.

206. On their face and as applied, the Orders' violation of Plaintiffs' rights to free speech have caused, are causing, and will continue to cause Plaintiffs to suffer immediate and irreparable injury and undue and actual hardship.

207. Plaintiffs have no other adequate remedy at law to correct the continuing deprivation of liberties by the Local Orders.

208. Plaintiffs seek an immediate, temporary injunction against the Local Orders; and further permanent injunctive relief against the Orders; and damages to be proven at trial.

**COUNT V — VIOLATION OF THE RIGHT TO EQUAL PROTECTION UNDER THE FOURTEENTH AMENDMENT.**

209. Plaintiffs hereby reallege and adopt each and every allegation in the paragraphs above.

210. The Fourteenth Amendment to the United States Constitution guarantees Plaintiffs the right to equal protection under the law.

211. Order 28 and the Local Orders, on their face and as applied, are an unconstitutional abridgement of Plaintiffs' right to equal protection under the law, are not neutral, and specifically target Plaintiffs and others for unequal treatment.

212. Order 28 and the Local Orders, on their face and as applied, are an unconstitutional abridgment of Plaintiffs' right to equal protection because they treat Plaintiffs differently from others similarly situated on the basis of the content and viewpoint.

213. Defendants have demonstrated animus to the Plaintiffs by continuing to restrict the Plaintiffs' activities while allowing other mass public gatherings to take place in their jurisdictions in circumstances similar in time, place and manner.

214. Order 28 and the Local Orders, on their face and as applied, impermissibly discriminate between certain non-religious gatherings and religious or faith-based gatherings.

215. Defendants lack a compelling, legitimate, or rational interest in the Orders' application.

216. Order 28 and the Local Orders, on their face and as applied, are not the least restrictive means to accomplish any permissible government purpose sought to be served.
217. Order 28 and the Local Orders, on their face and as applied, are irrational and unjustifiable and impose irrational and unjustifiable restrictions.
218. Order 28 and the Local Orders, on their face and as applied, have caused, are causing, and will continue to cause Plaintiffs immediate and irreparable harm, and actual and undue hardship.
219. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of their liberties.
220. Plaintiffs seek an immediate, temporary injunction against the Local Orders; further permanent injunctive relief against the Orders; and damages to be proven at trial.

**COUNT VI — REGULATORY TAKING IN VIOLATION OF THE FIFTH AMENDMENT TAKINGS CLAUSE.**

221. Plaintiffs hereby reallege and adopt each and every allegation in the paragraphs above.
222. The Takings Clause of the Fifth Amendment provides that private property shall not “be taken for public use, without just compensation.”
223. The Takings Clause “is designed not to limit the governmental interference with property rights per se, but rather to secure compensation in the event of otherwise proper interference amounting to a taking.” *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 536–37 (2005).
224. The Takings Clause bars government actors “from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Armstrong v. United States*, 364 U.S. 40, 49 (1960).
225. “The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.” *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415–16 (1922).

226. Order 28 and the Local Orders impacted Plaintiffs Yang, Driftmier, Haug, McElwain, Korleski, Manning, Binning, Thorne, and Moser and their use of their property to such an extent that, at least temporarily, the Orders entirely diminished all economically beneficial use of their business or their property.

227. Order 28 and the Local Orders constitute a regulatory taking of property with respect to these Plaintiffs, requiring just compensation under the Takings Clause of the Fifth Amendment.

WHEREFORE, Plaintiffs respectfully pray for the relief against the State as set forth in this prayer for relief.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief as follows:

1. That the Court issue a Temporary Restraining Order restraining and enjoining the Defendants, and all other persons in active concert or participation with them, from enforcing, attempting to enforce, threatening to enforce, or otherwise requiring compliance with the Local Orders or any other order to the extent any such order prohibits Plaintiffs from exercising their constitutional rights as set forth above to the same extent the State allows so-called “essential” entities or people to do so.

2. That the Court issue a Preliminary Injunction pending trial, and a Permanent Injunction upon judgment, restraining and enjoining the Defendants, and all other persons in active concert or participation with them, from enforcing the Local Orders so that:

a. The Defendants, and all other persons in active concert or participation with them, will not apply the Local Orders in any manner as to infringe Plaintiffs’ constitutional rights by discriminating against their right to assembly, speech, free exercise of religion, equal protection, to work or to worship and all other constitutional and statutory rights outlined herein;

b. The Defendants, and all other persons in active concert or participation with them, will apply the Local Orders in a manner that treats Plaintiffs’ on equal terms as so-called “essential” entities and persons;

c. The Defendants, and all other persons in active concert or participation with them, will cease threatening criminal prosecution, and filing any criminal charges based on violation of Order 28

or the Local Orders, to the extent the activity at issue is constitutionally protected as set forth in this lawsuit;

d. The Defendants, and all other persons in active concert or participation with them, will not bring any enforcement, criminal, licensing, or other actions against Plaintiffs, and will take positive action to ensure that the constitutional rights of the Plaintiffs as set forth in the action are protected and not infringed ;

3. That the Court render a Declaratory Judgment declaring that Order 28 and the Local Orders both on their face and as applied are unconstitutional under the United States Constitution, and further declaring that:

a. Defendants have violated Plaintiffs' civil rights within the meaning of section 1983;

b. Defendants have violated Plaintiffs' rights to freedom of speech;

c. Defendants have violated Plaintiffs' rights to free exercise of religion;

d. Defendants have violated Plaintiffs' rights to freedom of assembly;

e. Defendants have violated Plaintiffs' rights to equal protection of the laws by impermissibly prohibiting gatherings with political or religious purposes, by allowing so called "essential" organizations or persons to do what others similarly situated are not, and by applying criteria that treat those exercising first amendment freedoms in a discriminatory and dissimilar manner as to other gatherings;

f. Defendants have exceeded their "emergency" powers by continuing to issue "emergency" orders, contrary to the decision of the Wisconsin Supreme Court in *Wisconsin Legislature v. Palm*, 2020 WI 42.

4. That the Court award Plaintiffs damages for the violation of Plaintiffs' constitutional rights.

5. That the court award just compensation for the regulatory taking of Plaintiffs' property;

6. That the court enter a declaratory judgment that Order 28 and the Local Orders constitute an unconstitutional taking without just compensation, under the Fifth and Fourteenth Amendments;



an injunction prohibiting Defendants from enforcing the Orders unless, and until, a mechanism is established to provide just compensation;

7. That the Court adjudge, decree, and declare the rights and other legal relations within the subject matter here in controversy so that such declaration shall have the full force and effect of final judgment.

8. That the Court retain jurisdiction over the matter for the purposes of enforcing the Court's order.

9. That the Court declare Plaintiffs are prevailing parties and award Plaintiffs the reasonable costs and expenses of this action, including a reasonable attorney's fee, in accordance with 42 U.S.C. § 1988.

10. That the Court grant such other and further relief as the Court deems equitable and just under the circumstances.

DATED this 17th day of June, 2020

and Respectfully submitted

s/ Joseph W. Voiland

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