

EXHIBIT D

**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**

SCOTT HERNDON, REV. JOSH JONES,)
REV. MICHAEL GULOTTA, REV. TIM)
REMINGTON, GABRIEL RENCH,)
CHRIS SCHUELER, AND DON MARTIN)

Plaintiffs,

v.

Case No. 2:20-CV-00205

BRADLEY JAY LITTLE, in his official)
capacity as Governor of Idaho, and)
DAVE JEPPESEN, in his official capacity)
as the Director of the Idaho Department of)
Health and Welfare,)

Defendants.

DECLARATION OF REV. JONATHON T. KRENZ

I, Jonathon T. Krenz, am an adult, under no disability, and hereby declare the following:

1. I am the pastor of Augustana Lutheran Church in Moscow, Idaho.
2. I graduated from Concordia University in Portland, Oregon in 2002 with a degree in pastoral studies.
3. I graduated from Concordia Theological Seminary in Fort Wayne, Indiana with a Master of Divinity degree in 2006 and was subsequently ordained as a pastor in the Lutheran Church–Missouri Synod.
4. I have been the pastor of Augustana Lutheran Church since June of 2018.

5. My duties as pastor include: Preaching and administering the Mass every Sunday and feast day and as often as the congregation desires, administering the Sacrament of Holy Baptism, visiting people at their homes and at hospitals, visiting members at nursing care facilities, ministry to the sick and dying, teaching young and old, hearing individual Confession and pronouncing Absolution, giving pastoral counsel, uniting members of our congregation in Holy Matrimony, burying the dead, consoling the grieving and sorrowful, and being present with our people in all the joys and sorrows and significant milestones of life.
6. I am competent to testify as to the matters contained herein, I am over the age of 18, and I make this declaration based upon my own personal knowledge, experience, and written and oral conversations I have personally held with local law enforcement.
7. On or about March 25, 2020, the Governor of Idaho issued a “Statewide Stay-Home Order.”
8. On or about April 15, the Governor amended the Stay-Home Order.
9. I have read both the original and the amended Stay-Home Order.
10. I was deeply concerned with the Stay-Home Order because churches and pastoral work are excluded from the definition of “essential business.”
11. Pastors and churches are not included in the definitions of “Essential Businesses.”
12. Pastoral duties and church attendance are not included in the definition of “Essential Activities.”

13. Administration and reception of the Sacraments of Holy Baptism, Holy Absolution, and Holy Communion, as well as conduct of the Divine Liturgy, appear, by the plain meaning of the words of the order, to be specifically prohibited by the governor's Stay-Home Order.
14. Recognizing this, I was very concerned that the Governor of Idaho had declared public Christian worship to be illegal, a thought shocking to me as an American who has read the Constitution.
15. As a Confessional Lutheran pastor, I am very concerned to heed the admonition of God expressed, for instance, in Romans 13:1 to, "be subject to the governing authorities."
16. In fact, every Sunday during the Mass, we specifically pray for both our national and local political leaders.
17. Therefore, to make sure I understood what law enforcement expected of me as a pastor, I contacted the Moscow Police Department for clarification and spoke with the Captain and the city employee on duty that day.
18. Both the Captain and city employee originally agreed that my proposals to administer the Mass in a way that complies with CDC guidelines (as described herein) would be acceptable, but they later called me back to state that my proposals would violate the order and not be permitted.
19. After the governor extended and amended the order on or about April 15th, I contacted Police Chief James D. Fry, Jr. offering to him proposed solutions.
20. After requesting clarification from me as to how I proposed to administer the Mass while complying with CDC guidelines and attempting to meet the

spirit of the Stay-Home Order, Chief Fry eventually confirmed that my initial read of the order was correct: we were outright prohibited from observing the Mass on Sundays and other Feast Days as we normally would, or administering any of the Sacraments.

21. I proposed to Chief Fry that my congregation instead hold small, separate, services in my driveway, with each family spaced more than six feet apart from every other family, but he stated that that would not be permitted.
22. I alternatively proposed that we hold drive-in church services, meaning that three or four vehicles at a time would gather in a semi-circle around me with windows partially open so that they could participate in corporate prayer, listen to a Bible reading by me, hear a brief sermon by me, and then receive the Sacrament of Holy Communion, but he also stated that this would not be permitted.
23. As a further alternative to that, I proposed to Chief Fry that the drive-in church service be conducted instead on my driveway, but this, too, was not permitted.
24. I clarified with Chief Fry that under my ideas, only members of the same household would be in each vehicle. I promised to wear a mask, and to wash my hands thoroughly between each round, and to cleanse all sacramental vessels with Everclear alcohol. I offered to wear gloves if that would be better. Under my plan, no one would leave their vehicles, and I would not enter anyone's vehicle. Further, I promised that I would encourage the most vulnerable church members to stay home. This was not permitted.

25. And then as an alternative to my congregants driving to me, and remaining in their cars, I proposed that I deliver the Sacrament of Holy Communion to the front doors of my parishioners, have a brief service through the screen door, with all of the same safety precautions as above. In other words, just as restaurants can stay open under the Stay-Home Order if they only serve take-out and delivery, perhaps my church can stay open by me delivering it, so to speak, to my parishioners at home.
26. Chief Fry told me that he would investigate the matter.
27. Chief Fry appeared to give each of my proposals a great deal of consideration before telling me each one would be in violation of the order.
28. Indeed, I do believe that Chief Fry was doing his best to not unduly burden us but was faced with a dilemma; his read of the Stay-Home Order was that it prohibited every alternative I proposed.
29. The answer that I received back from Chief Fry effectively stated that the City of Moscow interprets the Governor's Stay-Home Order, as amended on April 15, as applying to churches to prohibit the Mass as historically practiced for nearly 2,000 years, even during persecution under Roman emperors such as Nero, Trajan, and Diocletian.
30. Specifically, I was told, this portion of the Order applies to churches: "All people in Idaho shall immediately cease hosting or participating in all public and private gatherings and multi-person activities for social, spiritual and recreational purposes, regardless of the number of people involved, except as specifically identified in Section 8. Such activity includes, but is not limited to, community, civic, public, leisure, faith-based, or sporting events;

parades; concerts; festivals; conventions; fundraisers; and similar activities. This prohibition also applies to planned wedding and funeral events, with the exception that funerals are permitted so long as they occur outside and comply with the Social Distancing Requirements as defined in Section 8.j.”

31. Further, Chief Fry explained to me that drive-in services would only be allowed as long as no one exits the vehicle and no transactions are made (*i.e.* the Sacrament of Holy Communion is not administered).
32. The Chief told me that if I administer the Sacrament of Holy Communion, I would be in violation of the Governor’s order.
33. Chief Fry’s final answer was: “Based on the Governor Little’s order, the scenarios you posed would be a violation of the Governor’s Amended Stay-Home Order. As you know, the intent of the Order is to ensure the maximum number of people self-isolate in their places of residence to the maximum extent feasible to slow the transmission of COVID-19.” (See Attachment 1, e-mail of Friday, April 17, 2020 at 1:29 p.m.)
34. So to put it more simply, I could legally deliver a pizza to the front door of a congregant, which the congregant would take and eat, but if I also delivered to him the Sacrament of Holy Communion while I am there, I could be ticketed or arrested, because delivering the body and blood of Christ as food is against the Order.
35. This is chilling to me; I am forced to chose between my pastoral oath and facing arrest, fines, and imprisonment.
36. According to the Augsburg Confession of 1530, a doctrinal document to which I, in my ordination vow, swore a “*quia subscription*,” (meaning that I

affirm that I will adhere to it because it teaches correct doctrine), I am to personally, physically administer the Sacrament of Holy Communion to my parishioners in a communal setting:

“Now, forasmuch as the Mass is such a giving of the Sacrament, we hold one communion every holy-day, and, if any desire the Sacrament, also on other days, when it is given to such as ask for it. And this custom is not new in the Church; for the Fathers before Gregory make no mention of any private Mass, but of the common Mass [the Communion] they speak very much. Chrysostom says that the priest stands daily at the altar, inviting some to the Communion and keeping back others. And it appears from the ancient Canons that some one celebrated the Mass from whom all the other presbyters and deacons received the body of the Lord; for thus the words of the Nicene Canon say: Let the deacons, according to their order, receive the Holy Communion after the presbyters, from the bishop or from a presbyter. And Paul, 1 Cor. 11:33, commands concerning the Communion: Tarry one for another, so that there may be a common participation.” AC Art. XXIV, 34-39.

37. According to the Solid Declaration of the Formula of Concord of 1577, an essential part of the Lutheran Confessions to which I also swore a *quia subscription*, I the pastor, as the officiant of the Sacrament of Holy Communion, must publicly utter the words of institution of Christ in the presence of the congregation and then administer the elements to them:

“Now, in the administration of the Holy Supper the words of institution are to be publicly spoken or sung before the congregation distinctly and clearly, and should in no way be omitted [and this for very many and the most important reasons. First, in order that obedience may be rendered to the command of Christ: This do [that therefore should not be omitted which Christ Himself did in the Holy Supper], and [secondly] that the faith of the hearers concerning the nature and fruit of this Sacrament (concerning the presence of the body and blood of Christ, concerning the forgiveness of sins, and all benefits which have been purchased by the death and shedding of the blood of Christ, and are bestowed upon us in Christ's testament) may

be excited, strengthened, and confirmed by Christ's Word, and [besides] that the elements of bread and wine may be consecrated or blessed for this holy use, in order that the body and blood of Christ may therewith be administered to us to be eaten and to be drunk, as Paul declares [1 Cor. 10:16]: The cup of blessing which we bless, which indeed occurs in no other way than through the repetition and recitation of the words of institution." FC SD VII, 79-82.

38. Therefore, my personal religious conviction is that I must physically administer the Sacrament of Holy Communion in a communal setting every Sunday, every Feast Day, and every other time a communicant member requests it.
39. But the Stay-Home Order prohibits me from doing so, under threat of arrest, fine, and imprisonment.
40. It is not only my personal belief, but also the official doctrinal position of the Lutheran Church–Missouri Synod that the Sacrament of Holy Communion cannot be administered other than in person, as most recently officially restated in the March 20, 2020, opinion of the Committee on Theology and Church Relations “Communion and COVID-19,” which cites the February 18, 2006, CTCR “Opinion Concerning DVD Consecration,” which itself cites the CTCR’s 1983 report “Theology and Practice of the Lord’s Supper” (attached as Attachments 2, 3, and 4, respectively):

The Lord’s Supper was instituted by Jesus with words and actions spoken and carried out by him in the direct presence of his disciples (Matt. 26:26-28). Throughout history, the church has sought to be faithful to Christ’s practice in this regard. Pastors speak the words of institution in the presence of the assembled congregation, thereby giving assurance that we are “doing this” as our Lord has instructed us to do (Luke 22:19). Whenever the actual words and actions of the celebrant in consecrating the elements are intentionally separated (by time, distance, or technological means) from the distribution and

reception, no assurance can be given that our Lord's instructions are being heeded and that the body and blood of Christ are actually being given and received for the forgiveness of sins and the strengthening of faith (cf. fn. 15 of the CTCR's 1983 report *Theology and Practice of the Lord's Supper* [TPLS]).

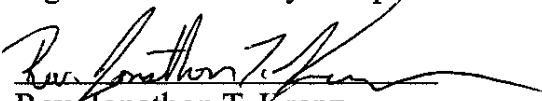
41. The recent opinion of the CTCR expressly condemns "online Communion," meaning that it is impossible for me to administer the Sacrament of Holy Communion via an online service, the only type of service permitted by the governor.
42. To put it another way, under the Stay-Home Order my parishioners may legally drive to McDonald's, talk to the employee through the car window, hand that employee money, receive change back from the hand of that employee, and receive a bag of food from another employee's hands, all while remaining in their car.
43. But, my parishioners may not drive to a church parking lot, remain in their car while talking with me, their pastor, pray with me, and receive the Sacrament of Holy Communion from my gloved hand, all while remaining in their car.
44. Moreover, my parishioners may receive pizza, or any other restaurant food, delivered to their doorstep for sustenance of their temporal lives, but may not receive the body and blood of Christ delivered to their doorstep for sustenance of their eternal lives.
45. When I administer the Sacrament of Holy Communion, I take great precaution in the purity with which I do so, because of how solemnly the Sacrament is to be administered and received, because of its centrality to the Lutheran faith.

46. We believe, teach, and confess that in the Sacrament of Holy Communion we do not merely receive bread and wine, but also the body and blood of our risen Lord and Savior Jesus Christ – God Himself incarnate – together with the bread and wine.
47. Moreover, I have read scientific studies regarding the very low risk of infection via the Sacrament of Holy Communion; these studies have shown the risk is lower than with common foodservice, due in part because of the antiseptic properties of the noble metals used to serve the bread and wine, and the high alcohol content of the sacramental wine used.
48. Thus, the latest scientific research I have read regarding the risks of Holy Communion (see Attachment 5) are in accord with our belief that it is, as St. Ignatius of Antioch called it in his Epistle to the Ephesians (approx. 120 AD), “the medicine of immortality, and the antidote to prevent us from dying, but [which causes] that we should live for ever in Jesus Christ”: “No poison can be in the cup that my Physician sends me.” (LSB 760 What God Ordains Is Always Good)
49. Because of the governor’s Stay-Home Order, I am unable to fulfill my vocation of pastor without risking arrest, fine, and imprisonment. I have one adult awaiting Holy Baptism, another adult awaiting Confirmation and First Communion, and five children awaiting Confirmation and First Communion. I cannot legally serve them until we are allowed to congregate. In addition, I have shut-ins in very frail health who have not had a visit from their pastor or Communion in over a month, and I have a congregation full of members hungering and thirsting for the Lord’s Supper and the mutual conversation and consolation of brothers and sisters in Christ congregating

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Signed this 29th day of April the Year of Our Lord Christ 2020 in Moscow, Idaho.


Rev. Jonathon T. Krenz