

EXHIBIT S

**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 PLAINTIFF DON MARTIN

I, Don Martin, am an adult, under no disability, and hereby declare the following:

- 1. I am a resident of Boise, Idaho.
- 2. The city of Boise is in Ada County, Idaho.
- 3. 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 and experience.
- 4. I am a Christian and have the sincerely-held religious belief that the Christian Bible, also known as Scripture, is the inerrant, infallible, efficacious, perspicuous, and all-sufficient Word of God.

5. As a Christian, I also have the sincerely-held religious belief that I am required to regularly attend church with my family.
6. To that end, in early 2020 my wife and I were regularly attending Sunday Service in Middleton, Idaho.
7. The town of Middleton, Idaho is in Ada County, Idaho.
8. On or about March 25, 2020, the Governor of Idaho issued a “Statewide Stay-Home Order.”
9. On or about April 15, the Governor amended that Stay-Home Order.
10. On or about May 1, 2020, the Governor issued a statewide Stay Healthy Order.
11. On or about May 16, 2020, the Governor issued a new statewide Stay Healthy Order.
12. I have read both the original and the amended Stay-Home Order and both the May 1 and May 16 Stay Healthy Orders.
13. At no time during the duration of the Statewide Stay-Home Order have I or my family been diagnosed with COVID-19 nor have we had any symptoms consistent with COVID-19.
14. I have read both the original and the amended Stay-Home Order. I found the Stay-Home Order disappointing and disconcerting because all individuals of Idaho were ordered to self-isolate in their place of residence. The only exceptions that were contained in the order were that we may leave to

receive essential services or engage in certain essential activities. Gatherings of individuals outside the home are specifically prohibited in the order.

15. The order specifically declared that “All people in Idaho shall immediately cease...participating in all public and private gatherings and multi-person activities for...spiritual... purposes, regardless of the number of people involved, except as specifically identified in Section 8. Such activity includes, but is not limited to...faith-based...activities.”
16. Nowhere in the order were gatherings for faith-based church services accommodated regardless of location or application of hygienic standards or social distancing nor regardless of whether the individuals were healthy.
17. Gatherings for church services were not declared in the order to be allowed as an essential activity or essential purpose.
18. It was clear to me that gatherings for church services were not permitted under the order.
19. The order specifically directed “that the Sheriff and the Chiefs of Police in the State of Idaho, and the Idaho State Police ensure compliance with and enforce this Order. The violation of any provision of this Order constitutes an imminent threat to public health.” The underlying Idaho Code used as the authority for the Stay-Home Order makes a violation of the order punishable as a misdemeanor with potential fines up to \$1,000 and potential incarceration in jail.
20. Recognizing this, I am very concerned that the Governor of Idaho has declared the practice of Christian gatherings for worship and religious services to be illegal in this state. That fact is devastating to me as an

Idahoan and American who has read both the constitutions of Idaho and the United States.

21. As a Christian, I am very concerned regarding the admonition of God expressed, for instance, in Romans 13:1, that I am to “be subject to the governing authorities.”
22. It is religious belief, as well as the teaching of my faith, that church attendance is an important and necessary part of the practice of the Christian faith.
23. My churches, my family and I find essential the exhortation from Hebrews 10:25, “not forsaking the assembling of ourselves together.”
24. Further, my education and life experience as an Idahoan and an American leads me to believe that the government does not have the authority to prohibit the assembly of healthy people for the purpose of religious worship and spiritual practices and duties. Rather, the First Amendment of the United States Constitution and Article 1 of the Idaho Constitution protect our God-given natural law right to publicly assemble for the expression of our Christian faith and the practice of religious worship and our duty to the Christian sacraments.
25. One of the sacraments we practice in our Christian faith is the Lord’s Supper in order to remember the blood and body of Jesus sacrificed for us. The Bible describes of the Supper in 1 Corinthians 11 as occurring “when ye come together in the church” and “When ye come together therefore into one place.” The Stay-Home Order does not seem to permit any possibility of coming together for the practice of the Lord’s Supper (or Communion) even

if we did not share the same cup or bread, which we do not in the churches in which we typically congregate.

26. Unfortunately, as a result of the Stay-Home Order my churches have not even held traditional Sunday services, not even the observance of Resurrection Sunday.
27. I have considered the possibility of whether we could congregate with our churches in the parking lots and in our cars or outside, but an additional part of the Stay-Home Order declares that “Intrastate travel is prohibited, including but not limited to, travel on scooter, motorcycle, automobile, or public transit, except for those purposes defined in Section 8”, and there is no exception provided specifically in Section 8 for any type of travel to or gathering for any spiritual or faith-based purpose. Section 6 of the order specifically admonishes that the only exceptions to the order must be “specifically identified in Section 8.”
28. A regular part and practice of my Christian faith that has been an immense spiritual and physical help to our family and that seem to be barred entirely by the Stay-Home Order is the calling and gathering of elders for prayer and physical anointing with oil if someone is injured or sick. I have both practiced this regularly as a recipient of the anointing and as an elder anointing others for injuries and illness (“Is any sick among you? let him call for the elders of the church; and let them pray over him, anointing him with oil in the name of the Lord: And the prayer of faith shall save the sick, and the Lord shall raise him up; and if he have committed sins, they shall be forgiven him” James 5:14-15). Yet, this critical practice of my faith seems to

be entirely prohibited by the order and chilled by the criminal penalties associated with violations of the order.

29. An additional part of my Christian faith and practice and one conducted regularly by my fellowship in church is the laying on of hands of the presbytery for the imparting of spiritual gifts. “Neglect not the gift that is in thee, which was given thee by prophecy, with the laying on of the hands of the presbytery.” 1 Timothy 4:14. The governor’s Stay-Home Order has seemed to make no allowance for the gathering of the Church for the purpose of the laying on of the hands of the presbytery for the impartation of spiritual gifts.
30. It is devastating to me that I do not even have an option for religious gathering and worship since my churches have closed due to the Stay-Home Order, and it is chilling to me that even if services, gatherings and practices were still available I would be subjecting myself, my wife and my minor children to arrest, fines, and possible imprisonment simply for participating in religious gatherings and the public or corporate practice of our Christian faith.
31. I am aware of mothers being arrested and cited in Idaho for allegedly violating the Stay-Home Order.
32. I am very concerned that, even if the Stay-Home Order is lifted over the next few weeks or months, the governor and law enforcement will believe that they have the right to shut down churches again in the future if there is another health emergency.

//

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 26th day of May, the Year of Our Lord Christ 2020, in Boise, Idaho.


Don Martin