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Columbus, OH 43215

May 29, 2020

Roy G. Ford
Case Manager
c/o Deborah S. Hunt
Clerk of Court
United States Court of Appeals for the Sixth Circuit
100 East Fifth Street, Room 540
Potter Stewart U.S. Courthouse
Cincinnati, Ohio 45202-3988

Re: Thompson v. DeWine, No. 20-3526

Dear Mr. Ford,

Pursuant to Federal Rule of Appellate Procedure 28(j), Plaintiffs-Appellees in the above-styled case submit the following supplemental authority, an Order entered on May 29, 2020 by the Supreme Court denying emergency injunctive relief in *Elim Romania Pentecostal Church v. Pritzker*, 2020 WL 2468194 (N.D. Ill., May 136, 2020), *injunction pending appeal denied*, 2020 WL 2517093 (7th Cir., May 16, 2020), *injunction pending appeal denied*, 2020 WL 2781671 (U.S., May 29, 2020) (Kavanaugh, J.), stating that:

The application for injunctive relief presented to Justice Kavanaugh and by him referred to the Court is denied. The Illinois Department of Public Health issued new guidance on May 28. The denial is without prejudice to Applicants filing a new motion for appropriate relief if circumstances warrant.

The plaintiffs had claimed in that case that Illinois's application of its prohibition on gatherings to religious practices violated the First Amendment. The District Court disagreed and refused relief. The Seventh Circuit, Easterbrook, J., also denied relief, stating:

plaintiffs have not shown a sufficient likelihood of success on the merits to warrant the extraordinary relief of an injunction pending appeal. The Governor's Executive Order 2020-32 responds to an extraordinary public health emergency. *See generally Jacobson v. Massachusetts*, 197 U.S. 11 (1905). The Executive Order does not discriminate against religious activities, nor does it show hostility toward religion. It appears instead to impose neutral and generally applicable rules, as in *Employment Division v. Smith*, 494 U.S. 872 (1990).

2020 WL 2517093, at *1.

The Supreme Court's denying relief is pertinent to the Plaintiffs-Appellees' Petition for Rehearing En Banc, Doc. No. 45-1, at 18, and its Motion to Vacate the Panel's Stay, Doc. No.

46-1, at 22, both of which argue that "[d]eciding what is and what is not 'First Amendment protected speech' is complicated even for skilled lawyers and judges." Content-neutral measures, like Illinois's and Ohio's, may often ban otherwise First Amendment "protected" activities especially during crises and emergencies. Thus, the Panel's conclusion that Plaintiffs-Appellees were plainly allowed to circulate during the COVID-19 crisis by Ohio's "First Amendment protected speech" exception was incorrect.

Sincerely yours,

/s/ Mark R. Brown

Mark R. Brown
Attorney for Plaintiffs-Appellees

cc: Benjamin M. Flowers, Attorney for Appellant