



May 22, 2020

Hon. Joseph Hogsett
200 East Washington Street, Ste 2501
Indianapolis, IN 46204

Dr. Virginia Caine
Marion County Public Health Department
3838 North Rural Street
Indianapolis, IN 46205

Re: Public Health Order 9-2020

Dear Mayor Hogsett and Dr. Caine:

We represent Castleview Church, located on Indianapolis' northeast side. Like all Hoosiers, the members of Castleview have pulled together and made sacrifices in order to help slow the spread of COVID-19, the illness caused by the novel coronavirus.

In Castleview Church's case, these sacrifices have included suspending their regular assembly for religious worship, including worship during the Easter season. The Castleview Church community has been mindful of the Lord's command that Christians "love one another" as the Lord loved each of us, which includes making necessary sacrifices for others. Going forward, Castleview will continue to make sacrifices for the health and safety of its members and for the broader Indianapolis community. Indeed, the church plans to implement numerous extraordinary measures that will allow the congregation to gather, while adopting all necessary physical distancing and sanitation precautions.

It was with great disappointment, however, that Castleview learned that the City of Indianapolis and Marion County has issued public health orders that treat churches and religious gatherings worse than non-religious businesses and services. Specifically, Castleview found Public Health Order 9-2020 (Order 9) troubling because it placed a hard cap on the number of congregants in a religious setting (25), but did not impose those restrictions on shopping malls, other essential businesses, non-essential retail, or even restaurants with outdoor seating. As Indiana's Attorney General explained in his May 14, 2020 letter (attached), Public Health Order 9 presented numerous, significant legal problems. Simply put, subjecting religious entities to worse treatment than their commercial counterparts violates the U.S. Constitution, the Indiana Constitution, and Indiana statutes.

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Despite Attorney General Hill's letter warning you of these legal problems and advising you that your Order violated Hoosiers' Free Exercise rights, you issued Public Health Order 10-2020 on May 15, 2020 (Order 10). The new order failed to remedy the religious freedom problems presented by Order 9—in fact it appears that the City of Indianapolis and Marion County doubled down on the unconstitutional provisions.

The fact that Order 10 declined to correct these religious liberty violations is especially problematic in the face of the order's other provisions. Order 10 allows shopping malls to operate with physical distancing and a total occupancy at 50% capacity. Additionally, the order specifies that “regardless” of physical distancing, *non-essential* retail businesses may operate at 50% capacity.

Governor Holcolmb has recognized churches and religious organizations as *essential*. Order 10 also imposes no capacity limitation on restaurants, provided that they use outdoor seating. Yet, your order strictly limits church gatherings to 25 congregants, without any regard to facility capacity, indoor or outdoor use, or physical distancing measures adopted.

Your order provides no reason for limiting religious activities while granting license and deference to non-religious commercial activities. As Attorney General Hill acknowledged, because there is no evidence that COVID-19 spreads more quickly at religious entities and gatherings than other public interactions, Order 10 “amounts to unconstitutional and unlawful religious discrimination.” We urge you to rescind the provisions of Order 10 and eliminate its impermissible limitations on religious activities and gatherings. At the very least, churches should be able to responsibly conduct their worship activities with the modifications that allow shopping malls, retail stores, or restaurants to function.

Castlevew Church will resume holding in-person church services within the next several days. To protect the health and safety of all involved, Castlevew Church is modifying its various worship practices. For example, the church will conduct its initial in-person services outdoors. The church sits on a multi-acre campus and the church's leadership has identified a large lawn area (about the size of two soccer fields) where the congregation will meet.

In the event of inclement weather, the church has identified a similarly sized paved parking lot area where the service will be held. All members will practice and maintain appropriate physical distancing. Additionally, although Castlevew participates in communion at some of their services, they will forego the distribution of communion during these initial services, out of an abundance of

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caution. Castleview will also limit access to restroom facilities to one individual/family at a time. And the church will employ proper sanitation measures in and around its facilities. These precautions are based on the guidance issued by the Center for Disease Control and Prevention and the Indiana State Department of Health.

Castleview Church wishes to comply with the law—it has followed the directions of state and local authorities throughout this time. However, the leaders and members of Castleview should not be forced to forego their religious activities and duties when the City of Indianapolis and Marion County imposes on churches irrational restrictions that are more severe than those imposed on commercial entities. We ask you to clarify that churches may engage in their worship activities and adopt the precautionary measures in the same fashion as commercial entities by May 26, 2020. If you refuse, we will take the appropriate legal action on behalf Castleview Church.

Respectfully Submitted,

s/Paul Schmitt
Paul Daniel Schmitt [34765-49]
Counsel for Castleview Church

Enclosure: Attorney General's May 14 Letter

cc: Donald Morgan, Corporation Counsel
Attorney General Curtis Hill
David Cortman
Ryan Tucker