

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Northland Baptist Church of St. Paul,
Minnesota, et al.,

Civ. No. 20-CV-1100-WMW-BRT

Plaintiffs,

v.

Governor Tim Walz, individually and in
his official capacity, et al.,

**PARTIAL SETTLEMENT
AGREEMENT AND RELEASE OF
CLAIMS**

Defendants.

This Partial Settlement Agreement and Release of Claims (“Agreement” or “this Agreement”) is entered into between the following (“the Parties”): Plaintiffs Northland Baptist Church of St. Paul, Minnesota, John Bruski, and Living Word Christian Center (“Church Plaintiffs”) and Defendants Governor Tim Walz, individually and in his official capacity, and Attorney General Keith Ellison, in his official capacity (“State Defendants”).

RECITALS

The Church Plaintiffs filed a civil action against the State Defendants in the United States District Court for the District of Minnesota, Case Number 20-cv-1100-WMW-BRT (“Action”).

The State Defendants filed a motion to dismiss the Church Plaintiffs’ claims asserted in the Action.

Following oral argument, on March 30, 2021, the District Court denied the State Defendants’ motion to dismiss the Church Plaintiffs’ claims for violations of their First Amendment free exercise and freedom of assembly claims, which were Counts 1 and 2 of the Second Amended Complaint (ECF No. 51) in the Action. The District Court granted the State Defendants’ motion to dismiss Church Plaintiffs’ freedom of speech claim in Count 2. The District Court also granted State Defendants’ motion to dismiss Counts 3 and 4 of the Second Amended Complaint asserted by the other non-church plaintiff businesses and their owners.

The Church Plaintiffs’ causes of action originally pertained to Governor Walz’ Emergency Executive Orders 20-01 through 20-74, which were then in place. Since the motion to dismiss was argued, Governor Walz has issued different and superseding

emergency executive orders, including the recently issued 21-11, which modified capacity restrictions for businesses and houses of worship, and 21-19, which extended the declaration of a peacetime emergency that was originally announced on March 13, 2020.

To avoid the time, expense, and uncertainty of further litigation, the Parties wish to resolve their differences and reach an end, compromise, and settlement of claims as further set forth herein.

AGREEMENT

In consideration of the mutual execution of this Agreement and the releases and promises made in this Agreement by the Parties, the Parties agree as follows:

1. The State Defendants agree that in any future emergency executive order issued by Governor Tim Walz pursuant to authority he claims from Chapter 12 of the Minnesota Statutes, or from any other authority, related to the COVID-19 pandemic, all houses of worship or places of gathering for religious exercise in Minnesota, including but not limited to Plaintiffs Northland Baptist Church of St. Paul and Living Word Christian Center, shall receive the same treatment, or less restrictive treatment, as the least restricted secular business regulated by the order, such as grocery and retail establishments, or venue regulated by the order, such as sporting events or entertainment events, in Minnesota.

- a. This agreed-upon treatment applies to all regulated businesses and venues, even those deemed “critical”, but does not apply to hospitals (or other health care facilities), congregate care facilities, crisis/homeless shelters, or correctional facilities.
- b. As an example, if a large retail store which sells groceries is not capacity-limited, then houses of worship in Minnesota shall not be capacity-limited. For clarity, the Parties agree that grocery and retail establishments are currently capacity-limited in that they must reduce capacity “as needed to ensure 6 feet of social distancing between all workers, customers, clients, and visitors.”
- c. Likewise, although there are currently no distinctions between “critical” and “non-critical businesses,” if a business which is part of a defined “critical” sector by an Order is not capacity-limited, then houses of worship in Minnesota shall not be capacity-limited (subject to the exceptions noted in paragraph 1a).

2. Within five (5) days of the execution of this Agreement by the State Defendants and the Church Plaintiffs, the Church Plaintiffs shall: (a) draft and provide a stipulation for dismissal related to the Church Plaintiffs’ asserted claims in the Action,

which dismisses the Church Plaintiffs' claims with prejudice; and (b) upon receipt of the signed stipulation from the State Defendants, promptly file the stipulation with a proposed order to dismiss the Church Plaintiffs' claims.

- a. The stipulation referenced in this paragraph shall not affect the other non-church plaintiffs' claims dismissed by the District Court in its March 30, 2021 order, and the other non-church plaintiffs retain their rights to appeal from entry of judgment by the District Court as to those claims.

3. Upon the Parties' execution of this Agreement, the Church Plaintiffs shall be deemed to have fully, finally, and forever released the State Defendants from all claims they asserted in the Action.

4. This Agreement constitutes a compromise, settlement, and release of disputed claims and is being entered into solely to avoid the burden, inconvenience, and expense of litigation. No Party to this Agreement admits any liability to the other Party with respect to any such claim settled pursuant to this Agreement. Each Party expressly denies liability as to every claim settled pursuant to this Agreement. Therefore, this Agreement is not to and will never be construed or deemed an admission or concession by any Party hereto of liability or culpability at any time for any purpose concerning any claim being compromised, settled, and released pursuant to this Agreement.

5. The Parties agree that the Church Plaintiffs and the State Defendants shall each pay their own costs and attorneys' fees associated with the Action.

- a. This agreement does not affect the other non-church plaintiffs' current or potential claims for damages, costs, or attorney fees, or the State Defendants' ability to seek a cost judgment, at the conclusion of this action as it relates to the other non-church plaintiffs' claims.

6. The Parties agree to act in good faith and to cooperate fully with each other in carrying out the intent of this Agreement, and for that purpose the Parties agree to execute any and all additional documents as may prove reasonably necessary to accomplish that intent.

7. The failure of any Party at any time to require performance of any provision of this Agreement will not limit that Party's right to enforce the provision, nor will any waiver of any breach of any provision constitute a waiver of that provision itself.

8. This Agreement will be binding upon each of the Parties herein and their respective agents, representatives, executors, administrators, trustees, personal representatives, partners, directors, officers, board members, shareholders, members,

agents, attorneys, insurers, employees, representatives, predecessors, successors, heirs, and assigns.

9. The undersigned Parties each further expressly warrants and represents to one another as follows:

- a. they have read this Agreement and have consulted with their respective attorneys concerning its contents and legal consequences and have requested any change in language necessary or desirable to effectuate their intent and expectations so that the rule of construction of contracts construing ambiguities against the drafting party shall be inapplicable;
- b. they have investigated the facts to the extent that they have deemed necessary in their sole discretion and have assumed any risk of mistake of fact as to any facts later proven to be other than or different from the facts now known to any of the Parties and therefore intend this Agreement to be binding without regard to any mistake of fact or law relating to the subject matter of this Agreement;
- c. this Agreement is being executed solely in reliance on their own respective judgment, belief, and knowledge of the matters set forth herein and on the advice of their respective attorneys following an independent investigation of all relevant matters to the extent they deem necessary and reasonable; and
- d. they have taken all actions and obtained all authorizations, consents, and approvals as are conditions precedent to their authority to execute this Agreement and thus warrant that they are fully authorized to bind the Party for which they execute this Agreement.

10. The Parties hereby incorporate the Recitals set forth above as an integral part of this Agreement and acknowledge the truth and accuracy of those Recitals.

11. This Agreement, including any exhibits hereto, is the entire, final, and complete agreement of the Parties relating to the subject of this Agreement, and supersedes and replaces all prior or existing written and oral agreements between the Parties or their representatives relating thereto. Each Party acknowledges and affirms that no other Party in this Case has made any promise to them other than that which is expressly set forth in this Agreement and that said Party does not rely on any promises outside of this Agreement as inducement to enter into this Agreement.

12. No amendment or modification of this Agreement will be effective unless in a writing that is executed by all of the Parties whose interests are affected by the modification.

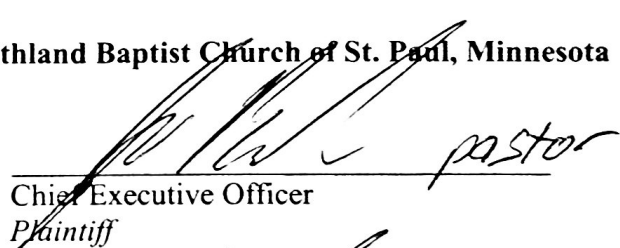
13. Any dispute arising from or related to this agreement, including but not limited to any allegations of breach, shall be governed by the laws of Minnesota, without regard to conflict of law principles, and shall be venued in the federal District of Minnesota. The parties agree to the exclusive jurisdiction of the federal District of Minnesota. A condition precedent to bringing any motion or lawsuit to enforce the terms of this Agreement is the completion of all the following steps, with the intent of allowing parties to resolve any disputes informally: 1) counsel for the complaining party will send counsel for the responding party a notice explaining the alleged non-compliance; 2) counsel for the complaining party will then schedule a video or phone conference with counsel for the responding party to meet and confer within a week, to further understand the alleged non-compliance and discuss potential resolution; 3) the responding party will then have a week to further respond or take corrective action; and 4) if after engaging in this process the parties are unable to come to a resolution, or the responding party fails to participate in this process, the complaining party may seek a remedy from the court.

14. This Agreement may be executed in multiple counterparts, all of which shall be deemed originals, and with the same admissibility and effect as if all Parties had signed the same document. All such counterparts shall be construed together with and shall constitute one Agreement, but in making proof, it shall only be necessary to produce one such counterpart. A photocopy, facsimile, or electronic mail (e-mail) transmission of this Agreement shall be as valid, admissible, and enforceable as an original.

THE PARTIES, BY THEIR SIGNATURES AND THOSE OF THEIR UNDERSIGNED AGENTS, HAVE EXECUTED THIS AGREEMENT AND AGREE TO BE BOUND BY IT.

Northland Baptist Church of St. Paul, Minnesota

Dated: 05/05/2021

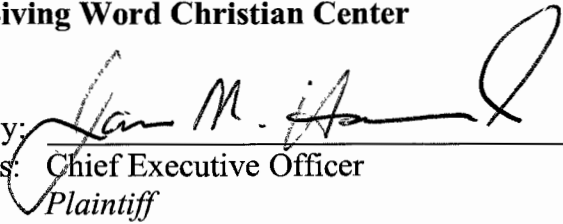
By:  pastor
Its: Chief Executive Officer
Plaintiff

Dated: 05/05/2021

By: 
John Bruski
Plaintiff

Living Word Christian Center

Dated: 5/5/21

By: 
Its: Chief Executive Officer
Plaintiff

Dated: 5/6/2021

By: 

LIZ KRAMER
Solicitor General
Atty. Reg. No. 0325089

CICELY R. MILTICH (#0392902)
KERIANN L. RIEHLE (#0398258)
Assistant Attorneys General

445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2131
(651) 757-1449 (Voice)
(651) 282-5832 (Fax)
liz.kramer@ag.state.mn.us
keriann.riehle@ag.state.mn.us
cicely.miltich@ag.state.mn.us

*Attorneys and Authorized Agents for
Defendants Tim Walz and Keith Ellison, State
Defendants*