24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. DIVISION:

VINTAGE CHURCH OF NEW ORLEANS, INC. and MATTHEW P. BRICHETTO

VERSUS

JEFFERSON PARISH SHERIFF'S OFFICE and JEFFERSON PARISH

FILED:_____ _____
DEPUTY CLERK

VERIFIED PETITION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, PERMANENT INJUNCTION, AND DECLARATORY JUDGMENT

Plaintiffs Vintage Church of New Orleans, Inc. and Matthew P. Brichetto, by and through undersigned counsel, hereby file their Petition for Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, and Declaratory Judgment against the Jefferson Parish Sheriff's Office and Jefferson Parish and would show as follows:

THE PARTIES

1.

Vintage Church of New Orleans, Inc. ("Vintage Church") is a Louisiana nonprofit corporation domiciled in New Orleans, Louisiana, and incorporated on March 31, 2008, with church locations in Jefferson Parish at 3927 Rayne St., Metairie, Jefferson Parish, Louisiana, and Orleans Parish at 4523 Magazine St., New Orleans, Louisiana.

2.

Matthew P. Brichetto ("Brichetto") is the Executive Pastor of Vintage Church and domiciled in New Orleans, Louisiana, at 2213 Valence St., New Orleans, Louisiana 70115.

3.

The Jefferson Parish Sheriff's Office ("JPSO") is an independent state agency domiciled in Jefferson Parish, Louisiana, at 1233 Westbank Expressway, Harvey, Louisiana 70058.

4.

Newell Normand (the "Sheriff" or "Normand") is the Sheriff of Jefferson Parish and is domiciled in Jefferson Parish, Louisiana. Normand is the ultimate supervisor for the JPSO.

5.

Jefferson Parish is a parish in the State of Louisiana.

JURISDICTION AND VENUE

6.

This Court has jurisdiction to hear and decide this matter under La. Code Civ. P. art. 3601 *et seq.* and La. Code Civ. P. arts. 1871 *et seq.*

7.

Venue is proper in Jefferson Parish because all defendants are domiciled in Jefferson Parish.

STATEMENT OF FACTS

8.

Vintage Church began in January of 2008 as a Bible study with twenty-five people. Vintage Church officially launched its Sunday worship service in September of 2008.

9.

Vintage Church believes that:

> The Church exists to worship and glorify God as Father, Son and Holy Spirit and to serve Him by doing His will in the earth. All members of the Church universal are to be vitally connected and committed to a local church. In this context, they are to live in this present world as the people of God, demonstrative the reality of the kingdom of God, manifesting the purity of the life of God, and living solely for the glory of God. Believers are to use the gifts the Holy Spirit has given in order to build up the church and preach the gospel, ministering and making disciples throughout the world.

Vintage Church, *Our Beliefs,* http://www.vintagechurchnola.com/beliefs (last visited Nov. 20, 2015).

10.

Plaintiffs, therefore, believe that they have a religious obligation to meet in their community for worship, including musical worship, and to preach the Gospel and minister to those in the community.

11.

In 2011, Vintage Church opened a new church location in Metairie, Jefferson Parish, Louisiana.

12.

In order to grow and build up the church, Vintage Church knew that it needed a fixed location for its Metairie congregation. Another church, the Highland Baptist Church of Cypress Street and Arnoult Road ("HBC"), owned a building at 3927 Rayne Street, Metairie, Louisiana. HBC had been established in the 1950's, but had since dwindled to a handful of members. HBC recognized that Vintage Church had numerous of members but no space, so HBC proposed a merger of the two churches, ensuring that the building on Rayne Street would continue to be a ministry to the community around 3927 Rayne Street.

13.

Vintage Church and HBC merged in December of 2010, and Vintage Church congregation in Jefferson Parish into 3927 Rayne Street. Vintage Church flourished at 3927 Rayne Street, and soon found that the 3927 Rayne Street building was too small to hold the number of congregants desiring to attend services each week. Vintage Church decided that, to minister to the community effectively, it needed to expand its building.

14.

In August of 2015, with plans ready for an expansion of the 3927 Rayne Street building, Vintage Church moved out of the building and into an air-conditioned and heated tent placed on Vintage Church's parking lot. The tent was to serve as Vintage Church's meeting area until construction could be completed on the expansion to the building, anticipated to be April or May of 2016.

15.

The tent could only be placed in one orientation because of requirements of where the heating and air conditioning equipment for the tent could be placed as well as by requirements for access to the physical building by the construction crew for its expansion.

16.

Officials of Jefferson Parish informed Vintage Church that, to hold a church service in the tent on Vintage Church's property, a special event permit is required.

17.

Vintage Church acquired a special event permit for August of 2015. When Vintage Church's officials spoke with Jefferson Parish officials about the times for the special event

permit, Jefferson Parish instructed Vintage Church to only acquire a permit for the times of the actual meeting and informed Vintage Church that setup prior to the official start time of the event did not require a special events permit.

18.

On August 2, 2015, Vintage Church held its first service, at 9:00 a.m., in the tent. While the service (and the event permit) started at 9:00 a.m., setup for the service began at 8:15 a.m.

19.

On August 9, 2015, during Vintage Church's second service in the tent, a neighbor called the JPSO. JPSO did not issue a citation.

20.

On August 18, 2015, a captain in the JPSO informed Vintage Church that they could not begin setup before 8:50 a.m. When Vintage Church protested that Jefferson Parish told them setup did not require a special events permit, the JPSO officer informed Vintage Church that it was a "common sense" rule and not written law. The JPSO officer requested that any sounds before 8:50 a.m. be kept below 60 dB.

21.

On August 23 and 30, a neighbor continued to call the JPSO during Vintage Church's services, but JPSO officers informed Vintage Church on both occasions that Vintage Church was not in violation of any ordinances.

22.

Because the special events permit had only been granted for August, Vintage Church then sought a renewal of the permit for September. Sean Burke, Jefferson Parish's official in charge of issuing special event permits, granted a new September permit but told Vintage Church that there could be "no live music." Burke explained that "live music" included only electric guitars and drums. Vintage Church followed Burke's explanation by using only acoustical music with no drums. Burke stated that the reasons for restricting Vintage Church was because he had to "cover [his] butt." Burke also indicated that he would no longer be issuing special events permits to Vintage Church.

23.

On September 6, 2015, a neighbor again called the JPSO because of the church service, and JPSO officers arrived and told Vintage Church that Vintage Church was not in violation of any ordinance.

24.

On September 25, 2015, Jefferson Parish required Vintage Church to reduce the size of the tent in which they were meeting by half to meet parking requirements.

25.

On October 4, 2015, a neighbor again called the JPSO. Three units arrived, but the officers told Vintage Church that the church was not in violation of any ordinance.

26.

On October 7, 2015, Sean Burke sent a demand to Vintage Church demanding the church to stop having any music or warning that Vintage Church would be shut down. Sean Burke informed Vintage Church that he would no longer be granting any special events permits for Vintage Church.

27.

On October 11, 2015, multiple JPSO officers arrived at Vintage Church in response to a neighbor's call and issued a summons to Executive Pastor of Vintage Church Matthew Brichetto for violating Jefferson Parish Code of Ordinances ("JPCO") 20-102 because the sound was measured at over 60 dB.

28.

Vintage Church then hired sound technicians to ensure that the sound levels remained below 60 dB.

29.

On October 18, 2015, multiple JPSO officers arrived in response to a neighbor's call, but they told Vintage Church that the church was under 60 dB.

30.

On October 25, 2015, multiple JPSO officers arrived and again told Vintage Church that the church was under 60 dB.

31.

On November 1, 2015, multiple JPSO officers arrived and told Vintage Church that the church was under 60 dB.

32.

Because Jefferson Parish reduced the permitted size of the tent, Vintage Church decided to move to two services at 9:00 a.m. and 11:00 a.m. to permit more congregants to attend. Vintage Church determined that 9:00 a.m. and 11:00 a.m. were the latest services that would be feasible because congregants often will not attend services later in the day.

33.

On November 8, 2015, the first Sunday with two services, multiple JPSO officers arrived. The JPSO officers told Vintage Church that they could not get a good reading of the sound and therefore did not issue any citations.

34.

On November 12, JPSO Captain Michael Kinler called Vintage Church and told them that JPSO would begin to issue summons or even "physically arrest" Vintage Church personnel if any amplified sound were used by the church for the first service, including the pastor's use of a microphone to preach, and regardless of the sound levels.

35.

On November 15, 2015, six JPSO officers in six marked JPSO vehicles, plus Sheriff Normand in an unmarked black SUV, arrived at Vintage Church in response to a neighbor's call. Vintage Church was not using any sound amplification, but JPSO officers demanded to inspect the equipment in the Vintage Church's tent to ensure that there was no sound amplification. Vintage Church's pastors showed the JPSO officers that all sound equipment was unplugged. JPSO nevertheless issued a second summons to Pastor Brichetto, stating that the sound levels were above 60 dB without any amplification at all.

36.

Plaintiffs cannot minister to the congregation without music and preaching. The demands of the JPSO effectively stop Plaintiffs from being able to have church services.

37.

Plaintiffs intended to play a video Advent message for each Sunday in Advent as part of Plaintiffs' religious worship. Defendants' demands towards Plaintiffs have prevented Plaintiffs from playing these videos.

38.

Without amplification, the ministers of Vintage Church cannot preach for the duration of a service at a volume that everyone in the tent can hear the message and Vintage Church cannot play videos and creative elements that are integral to their worship, such as the video Advent message.

39.

Without music, a central component of Plaintiffs' worship and praise is eliminated.

40.

Additionally, several Vintage Church members have felt intimidated by the JPSO's large presence and have therefore avoided attendance at the levels that they would have without the JPSO's intimidation.

41.

At present, Defendants maintain that JPCO 20-102 both prohibits any sound amplification, including the pastor's use of a microphone to preach, before 10:00 a.m., and prohibits Plaintiffs from ever exceeding 60 dB—approximately the volume of a normal conversation—regardless of amplification.

42.

All conditions precedent have been performed or have occurred.

CAUSES OF ACTION

Claim One: Violation of the Louisiana Preservation of Religious Freedom Act

43.

Plaintiffs incorporate and adopt by reference for all purposes each and every allegation in the preceding paragraphs and sections.

44.

The Louisiana Preservation of Religious Freedom Act, La. R.S. § 13:5231 *et seq.* ("LPRA"), states, in part, "Government shall not substantially burden a person's exercise of religion, even if the burden results from a facially neutral rule or a rule of general applicability, unless it demonstrates that application of the burden to the person is both: (1) In furtherance of a compelling governmental interest. (2) The least restrictive means of furthering that compelling governmental interest." La. R.S. § 13:5233.

45.

Vintage Church is a religious organization that, as part of its religious mission, believes that it is required to preach the Gospel both to its congregants and to the community in which it resides, to worship God, and to grow the church. Vintage Church feels called by God to its location at 3927 Rayne Street, Metairie, Louisiana.

46.

Brichetto is the Executive Pastor of Vintage Church. He, too, believes that he is called to serve with Vintage Church in preaching the Gospel both to Vintage Church's congregants and to the community in which it resides, in worshipping God, and in growing the church.

47.

Defendants JPSO and Normand's enforcement of JPCO 20-102 against Plaintiffs has severely curtailed Plaintiffs' ability to preach the Gospel, to worship God, and to grow the church according to Plaintiffs' religious beliefs. Defendants' actions have, therefore, substantially burdened Plaintiffs' conduct motivated by sincerely-held religious beliefs in violation of LPRA.

48.

Therefore, Plaintiffs are entitled to the relief requested below.

Claim Two: Violation of the Federal Religious Land Use and Institutionalized Persons Act

49.

Plaintiffs incorporate and adopt by reference for all purposes each and every allegation in the preceding paragraphs and sections.

50.

The Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.* ("RLUIPA"), states, in part, "No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution – (A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc(a)(1).

51.

For the same reasons described above that the Defendants violate the LPRA, Defendants also violate RLUIPA.

52.

Therefore, Plaintiffs are entitled to the relief requested below.

Claim Three: JPCO 20-102 violates the First and Fourteenth Amendments to the United States Constitution (Vagueness and Substantial Overbreadth)

53.

Plaintiffs incorporate and adopt by reference for all purposes each and every allegation in the preceding paragraphs and sections.

54.

JPCO 20-102 regulates substantially more than the Constitution allows and significantly compromises recognized First Amendment Protections.

55.

The 60 dB limit is so low that it could prohibit numerous activities such as a slightly elevated conversation or greeting, a backyard birthday party, or even a child's laughing or crying.

56.

JPCO 20-102 unconstitutionally subjects such sounds to criminal penalties for not acquiring a special event permit.

57.

JPCO 20-102 maintains two contradictory provisions that make it unclear as to whether the ordinance is violated when sounds exceed 60 dB or 75 dB. JPCO 20-102(f)(1) and (2).

58.

JPCO 20-102 encourages arbitrary and discriminatory enforcement.

59.

JPCO 20-102 fails to provide people of ordinary intelligence a reasonable opportunity to understand what the ordinance prohibits.

60.

JPCO 20-102 chills constitutionally protected speech.

61.

Therefore, Plaintiffs are entitled to the relief requested below.

Claim Four: Defendants' assertion that Vintage Church must have a special event permit under JPCO 26-31 violates the First and Fourteenth Amendments to the United States Constitution (Vagueness)

62.

Plaintiffs incorporate and adopt by reference for all purposes each and every allegation in the preceding paragraphs and sections.

63.

JPCO 26-31, which requires a special event permit for certain public assemblies, defines a special event *only* as one that utilizes public property or streets or that requires the placement of objects on a right-of-way.

64.

No special event permits described in the Jefferson Parish Code of Ordinances apply to a church service wholly held on property owned by that church.

65.

JPCO 26-31 fails to provide people of ordinary intelligence a reasonable opportunity to understand what the ordinance requires.

66.

Therefore, Plaintiffs are entitled to the relief requested below.

MEMORANDUM OF LAW

67.

Despite Plaintiffs' attempts to be responsive to Defendants' ever-changing demands, Defendants have continued to impose burden after burden on Plaintiffs. Now, the restrictions placed on Plaintiffs by Defendants have put Plaintiffs in the position of having to decide between stopping their church worship service or being continually cited and threatened with "physical arrest." As if those threats were not enough, Defendants have engaged in a campaign of intimidation against Plaintiffs by sending multiple sheriff's units to respond to an alleged noise-ordinance violation while Plaintiffs and Defendants had already been in communication with each other and Plaintiffs had already taken steps to reduce the noise level. Defendants' conduct against Plaintiffs violates the Louisiana Preservation of Religious Freedom Act and the federal Religious Land Use and Institutionalized Persons Act. Additionally, the ordinance that Defendants are attempting to enforce against Plaintiffs, Jefferson Parish Code of Ord. § 20-102, is overbroad and impermissibly vague in its application to Plaintiffs.

I. The Louisiana Preservation of Religious Freedom Act prohibits Defendants' actions towards Plaintiffs.

68.

The LPRA is Louisiana's version of the Religious Freedom Restoration Act ("RFRA"). While there are no cases interpreting the LPRA, numerous courts at both state and federal levels have interpreted either RFRA or state-level equivalents. *See, e.g., Burwell v. Hobby Lobby Stores, Inc.,* 134 S. Ct. 2751 (2014) (striking down the Patient Protection and Affordable Care Act's contraceptive mandate against closely-held, for-profit corporations that maintain religious objections); *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal,* 546 U.S. 418 (2006) (striking down application of the Controlled Substances Act when the act would stop a church in New Mexico from consuming a controlled substance); *Barr v. City of Sinton,* 295 S.W.3d 287 (Tex. 2009) (striking down application of a town ordinance that prohibited half-way houses within 1000 feet of residential areas, schools, parks, and churches when the ordinance would be used to prohibit a religious half-way house).

69.

As the U.S. Supreme Court explained, RFRA was designed to reverse the Supreme Court's holding in *Employment Div. v. Smith,* 494 U.S. 872 (1990), which repudiated the Supreme Court's balancing test in *Sherbert v. Verner,* 374 U.S. 398 (1963), and *Wisconsin v. Yoder,* 406 U.S. 205 (1972), and replaced that test, which provided religious protections even against neutral laws of general applicability, with a rule that generally applicable laws do not usually violate the First Amendment. *Hobby Lobby,* 134 S. Ct. at 2760. Congress responded to *Smith* with the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, with the purpose "to restore the compelling interest test as set forth in *Sherbert v. Verner,* 374 U.S. 398 (1963) and *Wisconsin v. Yoder,* 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened." 42 U.S.C. § 2000bb(b)(1).

70.

In *City of Boerne v. Flores,* 521 U.S. 507 (1997), the U.S. Supreme Court held that federal RFRA cannot regulate the states. Consequently, numerous states have enacted their own state RFRAs to provide the protections afforded by *Sherbert* and *Yoder* when state agencies burden a person's sincerely-held religious beliefs. LPRA does so for Louisiana. La. R.S. § 13:5232 ("It was and continues to be the intent of this state that the protections afforded by the *Sherbert* case apply in Louisiana.").

71.

To reinstitute the protections of *Sherbert,* RFRAs impose a standard test that "[g]overnment shall not substantially burden a person's exercise of religion, even if the burden results from a facially neutral rule or a rule of general applicability, unless it demonstrates that application of the burden to the person is both: (1) In furtherance of a compelling governmental interest. (2) The least restrictive means of furthering that compelling governmental interest." La. R.S. § 13:5233; *c.f.,* 42 U.S.C. § 2000bb-1.

72.

"Government," under the LPRA, is defined to include "any parish" or "sheriff." La. R.S. § 13:5234(6).

A. Defendants' enforcement of JPCO 20-102 against Plaintiffs is a substantial burdens on Plaintiffs' outreach, worship, and preaching.

73.

To determine that the government substantially burdened Plaintiffs' religious exercise, this Court needs to determine that there is a religious exercise that is substantially burdened. *See O Centro Espirita,* 546 U.S. at 428 (a "prima facie case under RFRA" exists where a law "(1) substantially burden[s] (2) a sincere (3) religious exercise").

74.

"Burden," under the LPRA, "means that the government, directly or indirectly, does any of the following: (a) Constrains or inhibits conduct or expression mandated by a person's sincerely held religious tenet or belief. (b) Significantly curtails a person's ability to express adherence to the person's religious faith. (c) Denies a person a reasonable opportunity to engage in activities which are fundamental to the person's religion. (d) Compels conduct or expression which violates a tenet or belief of a person's religious faith." La. R.S. § 13:5234(2).

75.

Plaintiffs have attempted every feasible means to meet the Parish's requests, but even with no sound amplification, which itself limits Plaintiffs' ability to worship, Plaintiffs have still be issued summons and under the constant threat of arrest. The sound amplification restriction before 10:00 a.m. and the 60 dB limit each "constrain or inhibit[] conduct or expression mandated by [Plaintiffs'] sincerely held religious tenet or belief."

76.

Plaintiffs have identified specific religious exercises burdened by the application of JPCO 20-102: outreach to the community, worship, and preaching the Word of God to edify the church and to reach more people for the Gospel. Because Plaintiffs are engaging in their religious exercise, however, Defendants are issuing summons to Plaintiffs that could result in a $500 per Sunday fine and threatening to "physically arrest" Plaintiffs.

77.

Plaintiffs now have to decide whether to continue to have religious worship and preaching while facing the constant threat of arrest and fine or whether to stop having religious

worship and preaching in the community, in violation of Plaintiffs' sincerely-held religious belief that they are called to worship and preach at 3927 Rayne Street.

78.

The U.S. Court of Appeals for the Fifth Circuit observed that, under *Yoder,* one of the cases that RFRA was enacted to restore, a substantial burden existed when a "law affirmatively compel[led] [Plaintiffs], under threat of criminal sanction, to perform acts undeniably at odds with fundamental tenets of their religious beliefs." *Merced v. Kasson,* 577 F.3d 578, 589 (5th Cir. 2009) (quoting *Yoder,* 406 U.S. at 218). The *Merced* court went on to state that, "at a minimum, the government's ban of conduct sincerely motivated by religious belief substantially burdens an adherent's free exercise of that religion. While not a general rule—the inquiry is fact-specific—we note that such a conclusion accords with the Texas Supreme Court's decision in *Barr:* 'A restriction need not be completely prohibitive to be substantial....'" *Id.* at 590. The Fifth Circuit also noted that its understanding of "substantial burden" comports with the Ninth Circuit's statement in *Greene v. Solano County Jail,* 513 F.3d 982, 988 (9th Cir. 2008), that the court had "little difficulty" in concluding that an outright ban on *a* religious exercise is a substantial burden. *Id.; see also Thomas v. Review Bd. of Ind. Employment Sec. Div.,* 450 U.S. 707, 718 (1981); and *Sherbert,* 374 U.S. at 404.

79.

In *Sherbert* itself, the U.S. Supreme Court said that depriving a person of unemployment benefits

> forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship. Nor may the [lower] court's construction of the statute be saved from constitutional infirmity on the ground that unemployment compensation benefits are not appellant's "right" but merely a "privilege." It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege.

Sherbert, 374 U.S. at 404; *see also Thomas,* 450 U.S. at 717–18 ("Where the state ... put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists."); *Yoder,* 406 U.S. at 208, 218 (The impact of a $5 fine "is not only severe,

but inescapable, for the … law affirmatively compels them, under threat of criminal sanction, to perform acts undeniably at odds with fundamental tenets of their religious beliefs.").

80.

In *Holt v. Hobbs,* 135 S. Ct. 853 (2015), the U.S. Supreme Court, in interpreting the equivalent "substantial burden" test under RLUIPA, held that requiring a Muslim inmate to shave is a substantial burden on his religious belief, *even though he acknowledged that his religion would credit him for simply attempting to follow his beliefs. Holt,* 135 S. Ct. at 862. As the Supreme Court held,

> RLUIPA's "substantial burden" inquiry asks whether the government has substantially burdened religious exercise (here, the growing of a ½-inch beard), not whether the RLUIPA claimant is able to engage in other forms of religious exercise.
>
> Second, the District Court committed a similar error in suggesting that the burden on petitioner's religious exercise was slight because, according to petitioner's testimony, his religion would "credit" him for attempting to follow his religious beliefs, even if that attempt proved to be unsuccessful. RLUIPA, however, applies to an exercise of religion regardless of whether it is "compelled."
>
> Finally, the District Court went astray when it relied on petitioner's testimony that not all Muslims believe that men must grow beards. Petitioner's belief is by no means idiosyncratic. But even if it were, the protection of RLUIPA, no less than the guarantee of the Free Exercise Clause, is not limited to beliefs which are shared by all the members of a religious sect.

Id. at 862–63 (internal cites and quotes omitted).

81.

If a $5 fine is "not only severe, but inescapable" and a substantial burden that requires the enjoinment of a neutral law of general applicability, then how much more so is the constant threat of either a $500 fine or physical arrest? Like the plaintiffs in *Yoder,* Plaintiffs are compelled, "under threat of criminal sanction," to violate their religious beliefs by not performing those duties to which Plaintiffs believe they have a religious calling and obligation.

B. Application of JPCO 20-102 to Plaintiffs is not in furtherance of a compelling governmental interest.

82.

The compelling interest test, under both RFRA (and therefore LPRA) and RLUIPA is a stringent test that cannot be satisfied by general interests like safety or noise prevention, but rather the government must demonstrate that it has a compelling interest in applying the ordinance to the particular claimant. *Holt,* 135 S. Ct. at 863 ("RLUIPA, like RFRA, contemplates

a 'more focused' inquiry and 'requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law "to the person"—the particular claimant whose sincere exercise of religion is being substantially burdened.'" (quoting *Hobby Lobby,* 134 S. Ct. at 2779)). "It is not enough that the goals of the law be legitimate, or reasonable, or even praiseworthy. There must be some pressing public necessity, some essential value that has to be preserved...." *Turner Board. Sys. v. FCC,* 512 U.S. 622, 680 (1994). The compelling interest test requires courts to "'scrutiniz[e] the asserted harm of granting specific exemptions to particular religious claimants' and 'to look to the marginal interest in enforcing' the challenged government action in that particular context." *Holt,* 135 S. Ct. at 863 (quoting *Hobby Lobby,* 134 S. Ct. at 2779) (alteration in original). In other words, Defendants cannot maintain that they simply have a compelling interest in keeping a peaceful neighborhood. *See Holt,* 135 S. Ct. at 863 (rejecting "safety and security" in a prison as too general of an interest to satisfy the compelling interest test). Instead, they must demonstrate that they have a compelling interest in the application of JPCO 20-102 to Plaintiffs, considering the marginal difference between enforcement and non-enforcement. Defendants cannot meet this standard.

83.

Furthermore, "a law cannot be regarded as protecting an interest of the highest order when it leaves appreciable damage to that supposedly vital interest unprohibited." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah,* 508 U.S. 520, 547 (1993) (internal citations omitted). In the present case, Defendants are attempting to force Plaintiffs to violate their sincerely held religious beliefs while permitting numerous exceptions to JPCO 20-102.

84.

JPCO 20-102(f) states:

> *Maximum permissible sound limits.* It shall be unlawful to make, cause or allow the making of any noise or sound which violates the provisions of this section.
>
> (1) No person shall operate or cause to be operated any source from any location in such a manner as to create a sound level which exceeds the limits set forth in Table 1 for the receiving land use category for any measurement period, when measured at or beyond the property boundary of the land use category from which the sound emanates, provided, however, that in the case of multifamily dwelling land use category, the sound level shall be measured within an adjacent intra-building dwelling.

(2) For any source of sound, the sound level shall not exceed the maximum permissible sound level limit set forth in Table 1 by fifteen (15) dB(A) for all land use categories.

(3) Sound level measurement shall be made with a sound level meter using the A-weighting scale in accordance with the standards promulgated by the American National Standards Institute.

Table 1 sets the "Sound Level Limit" for "Residential, noise-sensitive area, public space" at 60 dB(A).

85.

JPCO 20-102(h)(3) states:

> *Loudspeakers and sound amplifiers.* The using or operating of any loudspeaker, loudspeaker system, sound amplifier or other similar device between the hours of 10:00 p.m. and 7:00 a.m. on weekdays, and 10:00 p.m. and 10:00 a.m. on weekends and holidays, within or adjacent to residential or noise sensitive areas such that the sound therefrom is plainly audible across the real property line of the source; provided, however, that this shall not apply to any public performance, gathering or parade for which a permit has been obtained.

86.

On the basis of JPCO 20-102(f) and (h)(3), Defendants maintain that Vintage Church (1) must maintain a sound level below 60 dB at all times and (2) refrain from using any sound amplification, including the pastor's microphone, before 10:00 a.m. on Sunday.

87.

Defendants maintain that these provisions are designed to preserve the quiet of the neighborhood. Defendants recognize, however, numerous exceptions to these provisions that render any assertion that preserving the quiet of the neighborhood is a "compelling" governmental interest untenable. For example, power tools and lawn mowers are permitted to be used beginning at 8:00 a.m. on Sundays, without regard to their noise level. JPCO 20-102(g)(1). Persons who receive a permit are exempted from the sound levels in Table 1. JPCO 20-102(g)(3). Noises from church bells and chimes are exempted from the sound levels in Table 1. JPCO 20-102(g)(5). Noises from temporary construction activity are limited to 75 dB instead of 60 dB. JPCO 20-102(g)(6). Noise from garbage collection is exempt from the sound levels in Table 1. JPCO 20-102(g)(7). Noise from "[i]nfrastructure construction, repair, or maintenance by or on behalf of the Parish of Jefferson" is exempt from the sound levels in Table 1. JPCO 20-102(g)(8). And noise from the use of a power generator is exempt from the sound levels in Table 1 between 7:00 a.m. and 10:00 p.m. Additionally, construction and demolition work may begin at 8:00 a.m.

on Sundays and holidays instead of the 10:00 a.m. time limit Defendants are applying to Vintage Church. JPCO 20-102(h)(6) Powered model vehicles may be used beginning at 8:00 a.m. on Sundays. JPCO 20-102(h)(7).

88.

Defendants cannot maintain that they have a compelling interest—an interest "of the highest order"—in silencing Vintage Church when they allow noise from construction work, demolition work, lawn mowers, and power tools. As in *Lukumi,* Defendants have left "appreciable damage to that supposedly vital interest unprohibited." *Lukumi,* 508 U.S. at 547.

89.

Similarly, threatening to refuse to renew or to terminate a temporary tent permit on the basis of an invalid application of JPCO 20-102 is not a compelling governmental interest.

C. Defendants' application of JPCO 20-102 to Plaintiffs is not the least restrictive means of meeting their stated interest.

90.

Even if Defendants were to have a compelling interest in avoiding any sound that might wake up a neighbor, Defendants must show that banning all sound amplification before 10:00 a.m. and limiting sound levels to 60 dB generally is the least-restrictive means to achieve that goal. La. R.S. § 13:5233. That is, Defendants must show that there exists no other means or limits that are less restrictive to Plaintiffs' religious practice. *Hobby Lobby,* 134 S. Ct. at 2780. "The least-restrictive means standard is exceptionally demanding." *Id.*

91.

Even within JPCO 20-102, however, we see less restrictive means to, presumably, accomplish the same goal. As has been mentioned, most loud sounds (such as construction, demolition, powered model vehicles, lawn mowers, and power tools) may begin at 8:00 a.m. on Sundays. JPCO 20-102(h). Were Plaintiffs permitted to use sound amplification beginning at 8:00 a.m., the restriction would be more in line with the rest of the noise ordinance.

92.

The 60 dB limit, too, is either waived or raised to 75 dB for other activities. JPCO 20-102(g). No known recording of Plaintiffs' sound level has ever reached 75 dB.

93.

Imposing on Plaintiffs a general 60 dB limit and a time limit without regard to sound levels on the use of sound amplification are not the least-restrictive means of accomplishing Defendants' interest. These limits are much stronger than those imposed on other uses, while the less-restrictive limits presumably meet Defendants' interest (or else they must acknowledge that it is not a compelling interest). Furthermore, there is no rationale for banning all sound amplification without regard to sound level. If the pastor of Vintage Church uses a microphone to preach, the sound level may be very low, yet Vintage Church would still be in violation despite not causing any sound of such a level that the neighborhood would even notice.

94.

Defendants' issuing citations and threatening "physical arrest" of Plaintiffs unless Plaintiffs severely curtail or stop altogether their religious exercise (and even then, on November 15, 2015, when Plaintiffs attempted to have a service without any sound amplification at all, they were still issued a summons) is a substantial burden on Plaintiffs' religious beliefs. Defendants cannot demonstrate that they have a compelling interest in imposing these draconian restrictions on Plaintiffs, and Defendants cannot show that these restrictions are the least-restrictive means that would further such interest as they do have. Under the LPRA, Defendants' actions must be enjoined.

II. The Religious Land Use and Institutionalized Persons Act prohibits Defendants' actions towards Plaintiffs.

95.

RLUIPA, like RFRA (and the LPRA), was designed to provide increased religious liberty protections in the wake of the Supreme Court's decision in *Smith. Holt,* 135 S. Ct. at 859; *Cutter v. Wilkinson,* 544 U.S. 709, 714–17 (2005). As Congress recognized, land use regulations pose a particularly serious risk to religious freedom because "[t]he right to assemble for worship is at the very core of the free exercise of religion," and "[c]hurches and synagogues cannot function without a physical space adequate to their needs and consistent with their theological requirements." 146 Cong. Rec. 16698 (2000).

96.

To protect these fundamental rights, RLUIPA imposes several limitations, divided into four categories, on government land-use regulations. *First,* the "Substantial Burden Clause" uses the same fundamental test that is employed by RFRAs, including the LPRA. *Second,* the "Equal Terms Clause" provides that "No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." 42 U.S.C. § 2000cc(b)(1). *Third,* the "Nondiscrimination Clause" prohibits any government from "impos[ing] or implement[ing] a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination." 42 U.S.C. § 2000cc(b)(2). *Finally,* the "Unreasonable Limitation Clause" prohibits governments from "impos[ing] or implement[ing] a land use regulation that … unreasonably limits religious assemblies, institutions, or structures within a jurisdiction." 42 U.S.C. § 2000cc(b)(3)(B). Congress specifically provided that RLUIPA "shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution." 42 U.S.C. § 2000cc-3(g).

97.

RLUIPA's Substantial Burden Clause has the same basic test that RFRA (LPRA) uses. This clause provides that "[n]o government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution – (A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc(a)(1). Because this test is the same as the test used by LPRA, since Defendants have substantially burdened Plaintiffs' religious exercise, do not have a compelling interest to do so, and have not used the least restrictive means, Plaintiffs are entitled to prevail under the Substantial Burden Clause of RLUIPA.

III. The noise ordinance itself, JPCO 20-102, is substantially overbroad.

98.

An ordinance is overbroad when its "plain language is admittedly violated scores of times daily … yet only some individuals—those chosen by the police in their unguided discretion—are

arrested." *Houston v. Hill,* 482 U.S. 451, 466–67 (1987). Defendants assert that JPCO 20-102 prohibits sounds above 60 dB in residential areas (but see Section IV, *infra,* on vagueness). A 60 dB sound is equivalent to a conversation in a restaurant, office, background music, or an air conditioning unit at 100 feet. Purdue Dep't of Chemistry, *Noise Sources and Their Effects,* https://www.chem.purdue.edu/chemsafety/Training/PPETrain/dblevels.htm (last accessed Nov. 21, 2015). A restriction on sounds above 60 dB sets the permissible sound level so low that even two neighbors having a slightly louder conversation or a child's backyard birthday party would violate the ordinance, yet the JPSO is free to exercise discretion in whether to issue a summons (which is a legal arrest) or even to "physically arrest" the person making the noise, as the JPSO threatened to do to Plaintiffs. Because numerous noise sources may run afoul of JPCO 20-102, yet only some sources are likely to be targeted and punished, the ordinance, "by [its] broad sweep, might result in burdening innocent associations." *Broadrick v. Okla.,* 413 U.S. 601, 612 (1973). The First Amendment does not allow criminal punishment under such overbroad regulations because "[i]t has long been recognized that the First Amendment needs breathing space." *Id.* at 611.

IV. JPCO 20-102 is unconstitutionally vague.

99.

The U.S. Constitution requires that regulations provide adequate notice that the actions they ban are illegal. *United States v. Harriss,* 347 U.S. 612, 617 (1954) ("[N]o man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed."). "A statute can be impermissibly vague for either of two independent reasons. First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement." *Hill v. Colorado,* 530 U.S. 703, 732 (2000). When a law affects First Amendment freedoms, as JPCO 20-102 does, the due process doctrine of vagueness "demands a greater degree of specificity than in other contexts." *Smith v. Goguen,* 415 U.S. 566, 573 (1974).

100.

JPCO 20-102 violates these standards and is impermissibly vague because it appears to have two contradictory provisions as to what the proper noise level limit is. JPCO 20-102(f)(1) states, "No person shall operate or cause to be operated any source from any location in such a

manner as to create a sound level which exceeds the limits set forth in Table 1 for the receiving land use category for any measurement period, when measured at or beyond the property boundary of the land use category from which the sound emanates." JPCO 20-102(f)(2), however, states, "For any source of sound, the sound level shall not exceed the maximum permissible sound level limit set forth in Table 1 by fifteen (15) dB(A) for all land use categories." As Vintage Church is, itself, in a residentially-zoned area, JPCO 20-102(f)(2) arguably applies, which would place a sound limit on Vintage Church of 75 dB and not 60 dB.

V. Plaintiffs do not require a special event permit to hold a church service on their property.

101.

While Defendants maintain that Plaintiffs require a special event permit to conduct a church service in accord with Plaintiffs' religious beliefs in Vintage Church's tent, which is wholly located on Vintage Church's private property, Jefferson Parish's special event permit ordinance, on its face, does not apply to a church service held on private property.

102.

JPCO 26-31 *et seq.* covers special event permits for "public assembly." Pursuant to JPCO 26-31, a "special event" is "[t]he temporary use of *public* property for the purpose of conducting certain outdoor short term events that are open to the public, including block parties, outdoor music events, and events for a commercial purpose, *which utilize the traveled portions of streets and/or involve the placement of objects on a right-of-way.*" JPCO 26-31 (emphasis added).

103.

Furthermore, even were a special event permit granted, JPCO 26-63 requires that even permitted events follow the sound limits set forth in JPCO 20-102, which prohibits sounds above a that of a conversation. JPCO 26-63 ("During an outdoor music event, the sound, amplified or not, shall not exceed the applicable Table 1 levels set out in section 20-102 of the Code of Ordinances.").

TEMPORARY RESTRAINING ORDER

104.

La. Code Civ. P. art. 3601 states, in part, "An injunction shall be issued in cases where irreparable injury, loss, or damage may otherwise result to the applicant...." Pursuant to La.

Code Civ. P. art. 3603, "A temporary restraining order shall be granted without notice when: (1) It clearly appears from specific facts shown by a verified petition or by supporting affidavit that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party of his attorney can be heard in opposition, and (2) The applicant's attorney certifies to the court in writing the efforts which have been made to give the notice or the reasons supporting his claim that notice should not be required."

105.

The Louisiana Supreme Court has added the additional requirements that Plaintiffs must show that they are entitled to the relief as a matter of law and that they will likely prevail on the merits. *Barber v. La. Workforce Comm'n,* No. 15-CA-1700 (La. 10/09/15) (quoting *General Motors Acceptance Corp. v. Daniels,* 377 So.2d 346 (La. 1979)).

106.

As has been shown herein, Defendants have already issued two summons to Plaintiffs resulting from Plaintiffs' exercise of their religious beliefs. Any harm to a person's religious exercise is automatically an irreparable damage. As the U.S. Court of Appeals for the Fifth Circuit held, a plaintiff church "has satisfied the irreparable-harm requirement because it has alleged violations of its First Amendment and RLUIPA rights. 'The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.' *Elrod v. Burns,* 427 U.S. 347, 373 (1976).... This principle applies with equal force to the violation of RLUIPA rights because RLUIPA enforces First Amendment freedoms, and the statute requires courts to construe it broadly to protect religious exercise." *Opulent Life Church v. City of Holly Springs,* 697 F.3d 279, 295 (5th Cir. 2012); *see also Reaching Hearts Int'l, Inc. v. Prince George's Cnty.,* 584 F. Supp. 2d 766, 795 (D. Md. 2008) ("[T]he infringement of one's rights under RLUIPA constitute[s] irreparable injury." (citing *Elrod,* 427 U.S. at 373)). This same principle applies to RFRA (and thus LPRA) as it does to RLUIPA. *Kikumura v. Hurley,* 242 F.3d 950, 963 (10th Cir. 2001) ("[C]ourts have held that a plaintiff satisfies the irreparable harm analysis by alleging a violation of RFRA."); *Tyndale House Publrs., Inc. v. Sebelius,* 904 F. Supp. 2d 106, 129 (D.D.C. 2012); *O Centro Espirita,* 546 U.S. at 429 (assuming irreparable harm to the plaintiff in a RFRA case); and *Jolly v. Coughlin,* 76 F.3d 468, 482 (2d Cir. 1996).

107.

Defendants have reiterated that, if Plaintiffs have a church service that follows Plaintiffs' religious convictions at to how the service should be held, Defendants intend to continue issuing summons and dispatching multiple sheriff's vehicles to Plaintiffs because of Plaintiffs' religious exercise. As Vintage Church meets each Sunday, and this case does not involve the expenditure of public funds or the enforcement of a child support order, a temporary restraining order is necessary to stop the continued violation of Plaintiffs' religious rights until a hearing can be set to establish a preliminary injunction.

108.

Both the LPRA and RLUIPA authorize injunctive relief to prevent violations of their provisions. La. R.S. § 13:5237(1); 42 U.S.C. § 2000cc-2(a).

109.

Because Plaintiffs have demonstrated an irreparable injury, that they are entitled to relief as a matter of law, and that they are likely to prevail on the merits, Plaintiffs are entitled to a temporary injunction enjoining enforcement of JPCO 20-102 against Plaintiffs until such time as a hearing can be set to issue a preliminary injunction.

PRELIMINARY INJUNCTION

110.

Because Plaintiff have demonstrated a substantial likelihood of success on the merits, that they are entitled to the relief as a matter of law, and shown an irreparable injury if no injunction is entered, Plaintiffs are entitled, upon hearing, to a preliminary injunction during the pendency of this litigation pursuant to La. Code Civ. P. art. 3602.

DECLARATORY JUDGMENT

111.

Pursuant to La. Code Civ. P. art. 1871, "Courts of record within their respective jurisdictions may declare rights, status, and other legal relations whether or not further relief is or could be claimed. … The declaration shall have the force and effect of a final judgment or decree." Plaintiffs seek a declaration that, on the basis of the above legal reasoning, Defendants have violated Plaintiffs' exercise of religion under LPRA and RLUIPA and that JPCO 20-102 is substantially overbroad and impermissibly vague on its face. Defendants further request a

declaratory judgment that no special event permit is required for Plaintiffs to conduct a church service on their own property.

WHEREFORE, Plaintiff, VINTAGE CHURCH OF NEW ORLEANS, INC. and MATTHEW BRICHETTO, for the foregoing reason requests that this Court provide the following:

a. Issue a **Temporary Restraining Order** restraining and enjoining Defendants and any of their agents, employees, or other persons or entities acting on their behalf or in their stead from (i) enforcing JPCO 20-102 against Plaintiffs or (ii) requiring a special event permit in order to have a church service on property wholly owned by Plaintiffs;

b. Issue a **Preliminary Injunction** enjoining Defendants, during the pendency of this suit, from any of the acts described in subparagraph (a) herein;

c. Issue a **Permanent Injunction** enjoining Defendants from any of the acts described in subparagraph (a) herein;

d. Issue a **Declaratory Judgment** declaring that (i) JPCO 20-102 is impermissibly vague and overbroad in its application to Plaintiffs, (ii) Defendants' application of JPCO 20-102 to Plaintiffs in such a manner as to curtail or limit Plaintiffs' religious actions or conduct is a violation of the LPRA, (iii) Defendants' application of JPCO 20-102 to Plaintiffs in such a manner as to curtail or limit Plaintiffs' religious actions or conduct is a violation of RLUIPA, and (iv) Vintage Church is not required to have a special event permit in order to have a church service on a tent on its own property;

e. Instruct that Defendants be served with a copy of the above and foregoing petition and order;

f. Instruct that Defendants be cited to answer said petition and to appear before this Court at a date and time fixed by this Court to show cause why a preliminary injunction should not issue as prayed for and, after all due proceedings had, a permanent injunction and a declaratory judgment issue as prayed for in favor of Plaintiffs;

g. Award to Plaintiffs nominal damages for the violation of Plaintiffs' rights;

h. Award to Plaintiffs costs and attorney's fees against Defendants pursuant but not limited to La. R.S. § 13:5237 and 42 U.S.C. § 1988; and

i. Award to Plaintiffs such other and further relief to which they may be entitled.

Respectfully submitted,

ROY M. BOWES, La. Bar No. 03343
Roy M. Bowes & Associates
2550 Belle Chasse Highway, Suite 200
Gretna, Louisiana 70053
504-368-2700 (Phone)
504-368-2900 (Fax)

Counsel for Plaintiffs Vintage Church of New Orleans, Inc. and Matthew P. Brichetto

VERIFICATION

STATE OF LOUISIANA

PARISH OF JEFFERSON

Before me, the undersigned authority, duly commissioned and qualified in and for the Parish aforesaid, personally appeared Matthew P. Brichetto, known to me, who, being first duly sworn, upon his oath deposed and stated as follows:

1. My name is Matthew P. Brichetto. I am over the age of eighteen years old, and I am fully competent to make this verification.
2. I am the Executive Pastor of Vintage Church of New Orleans, Inc., a Louisiana non-profit corporation and a petitioner herein.
3. I have read the above and foregoing Verified Petition for a Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, and Declaratory Judgment (the "Petition"), and I am familiar with the facts alleged therein.
4. All of the information contained in the Petition is true and correct to the best of my knowledge, information, and belief.

_____
MATTHEW P. BRICHETTO

SWORN TO AND SUBSCRIBED before me on this _____ day of December, 2015, to certify which witness my hand and official seal.

_____
ROY M. BOWES (LSBN 03343)
NOTARY PUBLIC IN AND FOR THE
STATE OF LOUISIANA

My commission expires with life.

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. DIVISION:

VINTAGE CHURCH OF NEW ORLEANS,
INC. and MATTHEW P. BRICHETTO

VERSUS

JEFFERSON PARISH SHERIFF'S OFFICE
and JEFFERSON PARISH

FILED:_____ _____
DEPUTY CLERK

ORDER

CONSIDERING THE FOREGOING Verified Petition for Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, and Declaratory Judgment filed herein by Vintage Church of New Orleans, Inc., and Matthew P. Brichetto ("Plaintiffs"):

IT IS ORDERED that a Temporary Restraining Order be and hereby is issued as of this _____ day of _____, 2015, at _____ o'clock ___.m., which Temporary Restraining Order shall continue _____ days hereafter from the date(s) after service of this petition has been made, prior to the time of expiration, it is continued by this Court for good cause shown.

This Temporary Restraining Order shall be effective against Jefferson Parish Sheriff's Office, Newell Normand, Jefferson Parish, their officers, agents, employees, and counsel, and any persons in active concert or participation with them, on their behalf on in their stead, restraining them from enforcing Jefferson Parish Code of Ordinance § 20-102 or § 26-31 *et seq.* against Plaintiffs, from terminating Vintage Church of New Orleans, Inc.'s temporary tent permit, or from refusing to renew Vintage Church of New Orleans, Inc.'s temporary tent permit if construction exceeds 180 days.

IT IS FURTHER ORDERED that Plaintiffs are not required to furnish security as a condition to the issuance of this Temporary Restraining Order.

This Order is being granted without notice and hearing to temporarily preclude the Defendants from limiting or curtailing Plaintiffs' religious exercise.

IT IS FURTHER ORDERED that this Temporary Restraining Order be filed in the Clerk's Office and entered of record.

IT IS FURTHER ORDERED that the Defendants show cause on the _____ day of _____, 2015, at _____ o'clock, ___.m. why a preliminary injunction should not be issued and granted as prayed for by Plaintiffs.

IT IS FURTHER ORDERED that the Defendants file their response to the Plaintiffs' request for a Permanent Injunction and a Declaratory Judgment within the delays allowed by law.

Signed in Gretna, Louisiana this _____ day of _____, 2015.

_____
JUDGE

Please serve the foregoing Petition, Verification and Order upon the following:

(1) JEFFERSON PARISH SHERIFF'S OFFICE
1233 Westbank Expressway
Harvey, Louisiana 70058

(2) JEFFERSON PARISH
though its attorney
Deborah Cunningham Foshee
200 Derbigny Street, Suite 5200
Gretna, Louisiana 70053