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August 4, 2020

Via CM/ECF

Hon. Brian R. Martinotti, U.S.D.J.
United States District Court
402 East State Street
Trenton, NJ 08608

Re: *Natl' Ass'n of Theatre Owners v. Murphy, et al.*
No. 3:20-cv-8298-BRM-TJB

Notice of Supplemental Authorities

Dear Judge Martinotti:

Defendants write to provide this Court with two supplemental authorities in support of their opposition to Plaintiffs' pending motion for preliminary relief (Dkt. 26). Plaintiffs' reply brief (*see, e.g.*, Dkt. 29 at 1-2, 9-11, 14) focuses on Defendants' reliance on *Cutter v. Wilkinson*, 544 U.S. 709 (2005) (*see* Dkt. 26, at 37-38), and among other things charges Defendants with "fail[ing] to disclose *Cutter* applies only to the unique context of" institutionalized persons and that its doctrine does not speak to equal protection claims (Dkt. 29 at 10).

Defendants, having reviewed Plaintiffs' reply and as they have prepared for



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tomorrow's argument, wish to bring two authorities to the Court's attention, both of which counsel intends to discuss at oral argument tomorrow. First, Defendants will rely upon *Real Alternatives, Inc. v. Secretary of HHS*, 867 F.3d 338 (3d Cir. 2017) (attached as Ex. A), for the proposition that the rule discussed in *Cutter* applies well beyond the prison context, and undoubtedly applies to equal protection challenges. *See, e.g., id.* at 350-52 (relying on *Cutter*, among other Supreme Court precedents, and holding that even where an entity is "similarly situated to a religion," its equal protection claim that it deserves a similar accommodation would "still fail because of the historic principle of respect for the autonomy of genuine religions. This principle provides the legitimate purpose for the preferential treatment of religious organizations.... It is beyond dispute that respecting church autonomy is a legitimate purpose—one that not only satisfies rational basis review but also is enshrined to the constitutional fabric of this country."). Defendants also intend to highlight that this rule has been applied to restrictions that seek to address the spread of COVID-19, even if this Court applies strict scrutiny. *See Ill. Republican Party v. Pritzker*, No. 20-2175 (7th Cir. July 3, 2020) (attached as Ex. B).

Defendants appreciate the Court's consideration of this letter. Defendants also recognize the limited notice being provided in advance of the oral argument, but this was necessitated by the emergent nature of Plaintiffs' motion and the appropriately truncated motion schedule that resulted, as well as the specific arguments advanced

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for the first time in Plaintiffs' reply brief.

Respectfully submitted,

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Encls.

cc: All counsel of record