

20-56357

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**HARVEST ROCK CHURCH, INC., and  
HARVEST INTERNATIONAL  
MINISTRY, INC., itself and on behalf of its  
member churches in California,**

Plaintiffs,

v.

**GAVIN NEWSOM, in his official capacity  
as Governor of the State of California,**

Defendant.

On Appeal from the United States District Court  
for the District of California

No. 2:20-cv-06414JGB(KKx)  
The Honorable Jesus G. Bernal, Judge

**DEFENDANT-APPELLEE'S UNOPPOSED  
MOTION FOR LEAVE TO EXCEED WORD  
LIMITS (CIRCUIT RULE  
32-2); DECLARATION OF COUNSEL**

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Defendant-Appellee Governor Gavin Newsom submits this motion for leave to exceed the page limits for his opposition to Plaintiffs-Appellants' emergency motion for an injunction pending appeal. *See* Cir. Rule 32-2(a). Defendant seeks leave to file an opposition that does not exceed 7,400 words, 1,800 words (between six and seven pages) more than permitted by Ninth Circuit Rules 27-1(1)(d) and 32-3.<sup>1</sup> Defendant is cognizant that motions to exceed the page limit will be granted only “upon a showing of diligence and extraordinary and compelling need,” Cir. Rule 32-2(a), but respectfully submits that the modest expansion requested here is warranted given the importance and complexity of the issues that had to be briefed. Plaintiffs-Appellants do not oppose this motion.

The pending motion, filed on Tuesday, December 22, raises issues that “‘strike at the very heart of the First Amendment’s guarantee of religious liberty,’ *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, slip

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<sup>1</sup> Circuit Rule 27-1(1)(d) sets a 20-page limit for oppositions to motions. Circuit Rule 32-3, in turn, provides that “[i]f . . . a rule of this Court sets forth a page limit for a brief . . . the affected party may comply by” filing a “proportionally spaced brief . . . in which the word count divided by 280 does not exceed the page limit.” Thus, the rules ordinarily prescribe a limit of 5,600 words for oppositions to motions ( $5,600 / 280 = 20$ ). Defendant seeks leave to exceed that limit by 1,800 words (less than seven pages assuming 280 words per page).

op. at 6 (2020) (per curiam), and a pandemic that has killed over 300,000 Americans.

Counsel for the Defendant began working on the opposition brief before they received the Court's briefing schedule, and worked diligently over the weekend to meet the 9 a.m. deadline. *See* Declaration of Counsel (below) ¶ 3. Defendant has also exercised diligence to edit the brief to conform to the word limit. *Id.* ¶ 5. But the number, complexity, and importance of the legal and factual issues that need to be addressed, present extraordinary and compelling circumstances that support Defendant's request to exceed the word limit. *Id.* ¶¶ 3-5. Counsel for Plaintiffs-Appellants have indicated that they do not oppose this request. *Id.* ¶ 6.

### **CONCLUSION**

For the reasons explained above, Defendant respectfully asks the Court to accept its opposition brief as filed.

Dated: December 28, 2020

Respectfully Submitted,

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## **DECLARATION OF COUNSEL**

I, Seth Goldstein, declare as follows:

1. I am a Deputy Attorney General for the State of California and a counsel of record for Defendant-Appellee Governor Gavin Newsom in this case. I make this declaration based on my personal knowledge and, if called upon, could and would testify as to the truth of the matters asserted herein.

2. I have principal responsibility for drafting the opposition brief that is the subject of this motion to exceed the page limits.

3. On December 22, Plaintiffs-Appellants filed an emergency motion for an injunction pending appeal in this case. I started working on the opposition brief before the Court issued its order setting a deadline for the response. My colleagues in the Attorney General's Office and I worked diligently on the opposition brief over the weekend to meet the deadline.

4. Plaintiffs-Appellants' motion raises a number of complex legal and factual issues touching on, among other things, (1) recent Free Exercise Clause decisions by this Court and the Supreme Court; (2) the manner in which COVID-19 spreads from person to person; (3) the State's restrictions aimed at curbing the spread of the virus, and their scientific basis; and (4) the current state of the pandemic and its impact on local and state healthcare systems.

5. Although we worked diligently to make significant cuts to the brief in an effort to comply with the 5,600-word limit, we determined that we could not comply with the rule without significantly compromising the quality and thoroughness of the brief.

6. On December 27, I emailed counsel for Plaintiffs-Appellants informing them of the possibility that Defendant-Appellee would ask the Court for leave to file a brief with up to 7,500 words. Counsel indicated that they would not oppose this request.

I declare that the foregoing is true and correct under penalty of perjury under the laws of the United States.

Dated: December 28, 2020

By: /s/ Seth Goldstein

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HARVEST INTERNATIONAL  
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v.

**GAVIN NEWSOM, in his official capacity  
as Governor of the State of California,**

Defendant.

On Appeal from the United States District Court  
for the Central District of California

No. 2:20-cv-06414JGB(KKx)  
The Honorable Jesus G. Bernal, Judge

**OPPOSITION TO EMERGENCY MOTION FOR  
INJUNCTION PENDING APPEAL**

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## INTRODUCTION

Plaintiffs seek an injunction pending appeal blocking California's restrictions on worship services during the COVID-19 pandemic. Last week two panels of this Court denied requests for similar injunctions against California's restrictions. *See South Bay United Pentecostal Church v. Newsom*, No. 20-56358, \_\_\_ F.3d \_\_\_, 2020 WL \_\_\_\_\_ (9th Cir. Dec. 24, 2020); *Gish v. Newsom*, Nos. 20-55445, 20-56324 (9th Cir. Dec. 23, 2020). Moreover, unlike in *South Bay*, Plaintiffs here did not even attempt to rebut the State's expert testimony that California's restrictions are based on neutral and generally applicable risk criteria narrowly tailored to further the State's compelling interest in slowing the spread of COVID-19.

In seeking an injunction in the face of this daunting record, Plaintiffs assert that in *Roman Catholic Diocese v. Cuomo*, 592 U.S. \_\_\_, 2020 WL 6948354 (Nov. 25, 2020), the Supreme Court made a sweeping ruling that any COVID-19 restriction severely limiting worship services is unconstitutional and that California's "severe" restrictions on indoor worship services are therefore unconstitutional. *Roman Catholic Diocese*, however, did not purport to shift the focus of Free Exercise analysis away from its traditional focus on the treatment of analogous secular conduct to the severity of the restriction on religious conduct; to the contrary, it purported to apply traditional Free Exercise analysis. And when Plaintiffs urged their sweeping interpretation on the Supreme Court itself, far from

accepting it, the Supreme Court remanded to the district court for further consideration. *Harvest Rock Church v. Newsom*, 592 U.S. \_\_\_, 2020 WL 7061630 (Dec. 3, 2020). And Plaintiffs' suggestion that this Court's decision in *Calvary Chapel Dayton Valley v. Sisolak*, \_\_\_ F.3d \_\_\_, 2020 WL 7350247 (9th Cir. Dec. 15, 2020), abandoned the traditional focus on the treatment of analogous secular conduct is similarly unfounded.

Moreover, the unrebutted evidence presented on remand demonstrates that there is no disparate treatment of religion here. In sharp contrast to *Roman Catholic Diocese*, where New York singled out worship services for especially harsh treatment, California applies the same neutral factors in assessing the transmission risk of all conduct, secular or religious, and imposes restrictions proportionate to that risk. California places worship services along a continuum in which activities posing greater risks are subject to greater restrictions, those posing similar risks are subject to similar restrictions, and those posing lesser risks are subject to less restriction. Neither *Roman Catholic Diocese* nor *Dayton Valley* require strict scrutiny of such neutral and generally applicable regulations, and even if they did, California's restrictions would satisfy strict scrutiny because they are carefully tailored to the mechanisms by which COVID-19 spreads.

The injunction also should be denied because of the dire situation California now faces. Plaintiffs are undoubtedly suffering some injury from being prevented

from conducting services indoors and having instead to conduct services either outdoors or online. This injury is, however, outweighed by the public interest in avoiding additional outbreaks now when the State's health care system is in danger of being overwhelmed. In the last month, COVID-19 cases and hospitalizations in the State have skyrocketed, and in Los Angeles County one person is now dying every ten minutes from COVID-19. Especially as the County no longer has any additional ICU capacity, the Court should not pour gasoline on this fire by enjoining restrictions designed to reduce the risk of COVID-19 at precisely the moment when the health care system is least able to deal with them.

## **BACKGROUND**

### **I. CALIFORNIA'S EFFORTS TO COMBAT COVID-19**

COVID-19 is now the world's deadliest infectious disease. It has killed over 330,000 Americans, more than the number killed in combat in World War II, including more than 24,000 in California.<sup>1</sup> Although several vaccines have been developed, they are not widely available yet, and there is no known cure and only limited treatment options for the disease. Declaration of Dr. George Rutherford, Dkt. 66-2 ("Rutherford Decl.") ¶¶ 39–41.<sup>2</sup>

COVID-19 is transmitted primarily by respiratory droplets containing SARS-

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<sup>1</sup> See <https://covid19.ca.gov/state-dashboard/#top>; [https://covid.cdc.gov/covid-data-tracker/#cases\\_casesper100klast7days](https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days).

<sup>2</sup> All citations are to the district court docket.

CoV-2, the virus causing the disease, which are exhaled when individuals breathe, speak, sing, or chant. Declaration of Dr. James Watt, Dkt. 66-1 (“Watt Decl.”), ¶¶ 27–28. Until a vaccine is widely distributed, the only way to slow transmission of the disease, which spreads rapidly, is to limit the physical interactions in which it may spread. *Id.*, ¶¶ 32-36.

The risk of transmission depends on several factors. One is the number of people gathered. The greater the number, the greater the risk that one or more is infectious (even without knowing it), and the more people to whom the disease may be spread. Watt Decl. ¶¶ 37–43.

A second factor is the nature of the activity. Epidemiologists have found that “[v]iral load”—the number of “viable viral particles” to which a person is exposed—determines whether the virus will “overcome the body’s defenses and cause a COVID 19 infection.” Rutherford Decl., ¶¶ 36, 91. Transmission risk increases when infected individuals speak, sing, shout, or engage in other activities increasing exhalations. *Id.*, ¶¶ 95-100. This is especially true when individuals are in close proximity for extended periods because the respiratory droplets an infected person exhales may accumulate into doses large enough to overcome another’s immune system and cause infection. Transmission risk may be reduced, but not eliminated, by wearing face coverings and maintaining six feet of separation between individuals in different households. *Id.*, ¶¶ 36, 64; Watt Decl. ¶¶ 45–53.

A third factor is location. Transmission risk is substantially lower outside because respiratory droplets and aerosolized particles will dissipate into the atmosphere, especially if there is wind. Rutherford Decl. ¶¶ 63, 93. The amount of ventilation indoors likewise affects transmission risk. *Id.*, ¶ 92.

Indoor public gatherings pose an especially great transmission risk because they combine all three factors. Public gatherings may bring together large numbers of people from different households, which increases the risk that one or more is infected. Watt Decl. ¶ 37-44. Individuals at public gatherings also may remain in close proximity for extended periods during which the respiratory droplets exhaled by infected individuals may accumulate into doses large enough to infect others. *Id.* And indoors there is no wind to dissipate respiratory droplets, and ventilation may be limited. Watt Decl. ¶ 44; Rutherford Decl. ¶ 92. According to recent studies, indoor public gatherings have caused as much as 80% of COVID-19's spread. Rutherford Decl. ¶ 37.

Worship services, like other congregate activities, are especially risky public gatherings. Worship services generally last at least forty-five minutes to an hour and may be as long as two hours. Watt Decl., ¶ 46. Participants tend to know and speak with one another, which brings them into even closer contact while simultaneously increasing exhalations. *Id.* Singing, chanting and responsive reading also increase exhalations. *Id.* And many houses of worship have limited



ventilation, allowing even more infected respiratory droplets to accumulate. *Id.*; Rutherford Decl. ¶ 105. Consequently, many worship services unfortunately have become “super-spreader” events resulting in dozens, hundreds and even thousands of new infections. Rutherford Decl. ¶¶ 108-110; Declaration of Todd Grabarsky, Dkt. 67 (“Grabarsky Decl.”). Exs. 15-41 (describing outbreaks, including many recent ones).

## II. CALIFORNIA’S CURRENT COVID-19 FRAMEWORK

As courts have noted, California has been continuously fine tuning its efforts to curb the spread of COVID-19 in light of changing circumstances and developing scientific and medical understanding. *See S. Bay United Pentecostal Church v. Newsom*, \_\_\_ F. Supp. 3d \_\_\_, 2020 WL 6081733 at \*2-\*9, \*13 (S.D. Cal. Oct. 15, 2020) (detailing evolution of the State’s response), *vacated* 2020 WL 7224194.

After initially issuing a broad Stay-at-Home Order, California began to relax restrictions by issuing guidance on how to reduce the risk of spreading COVID-19. Some guidance applies across the board, such as requiring individuals from different households to maintain at least six feet of physical distance. Watt Decl., ¶¶ 77, 87. When research showed that COVID-19 is transmitted primarily through respiratory droplets, the State adopted a face covering requirement and barred singing, chanting, and other similar activities indoors. Grabarsky Decl. Ex. 8; Watt Decl. ¶ 87(i). To further reduce transmission risk, the State also has issued

guidance for specific industries and activities. See, e.g., Grabarsky Decl., Ex. 46. (extensive rules for factories). Houses of worship are required, among other things, to employ special cleaning and disinfecting protocols. Watt Decl. ¶ 70.<sup>3</sup>

While these measures reduce transmission risk, they do not eliminate it. Watt Decl., ¶ 38. The State therefore also limits the number of people who may congregate together, especially indoors, for activities that remain risky even when the foregoing measures are taken. The “Blueprint for a Safer Economy” restricts when sectors and activities may operate indoors and limits how many people may participate based on transmission risk. This risk is assessed in light of objective criteria such as the number of people involved, the nature of the activity, its duration, the ability to employ precautions such as masks, and ventilation. Grabarsky Decl. Exs. 4-7; *see also* Watt Decl. ¶¶ 82-88. In addition, counties are assigned to tiers, ranging from Tier 1 (“Widespread”) to Tier 4 (“Minimal”), based on the extent of COVID-19 spread, Grabarsky Decl. Exs. 4-7, and restrictions increase or decrease as counties move up or down in the tiers.

For example, in Tier 1 counties, the Blueprint prohibits congregating indoors for many businesses and activities—including museums, movie theaters,

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<sup>3</sup> In other areas, industries are governed by binding labor agreements requiring, among other things, routine (and for some daily) testing for the entertainment industry. See, e.g., Grabarsky Decl., Exs. 45-46; Rutherford Decl. ¶ 121.

restaurants, as well as worship services—but allows such gatherings outside, where transmission risk is much lower. Grabarsky Decl. Ex. 7. In other tiers, houses of worship, movie theaters, and restaurants may operate indoors with the lesser of 25% capacity or 100 persons in Tier 2, 50% capacity or 200 persons in Tier 3, or 50% capacity in Tier 4. *Id.* Protests and college lectures are subject to the same capacity limits. *Id.*

The Blueprint imposes more stringent restrictions on higher risk activities. Fitness centers, where physical exertion increases exhalation, are not permitted to open indoors in Tier 1 and are restricted to 10% capacity in Tier 2, 25% in Tier 3, and 50% in Tier 4. *Id.* Bars, wineries, entertainment centers, offices, and card rooms are not permitted to open indoors in Tiers 1 and 2, and indoor concerts and performances, which are congregate activities similar to worship services, are prohibited in all tiers. *Id.*

Less risky activities are treated more leniently. Retail stores and shopping malls, which pose less transmission risk than congregate activities because they involve only brief and transitory contacts, are permitted to open indoors at 25% capacity in Tier 1 and 50% in Tier 2. *Id.*; Watt Decl. ¶ 104. Other activities such as personal care services, hotels, and “limited services” (such as laundromats and auto shops), which pose even less transmission risk because they do not involve many people in close proximity, are permitted to open indoors in all tiers. *Id.*

### **III. THE CURRENT SURGE IN INFECTIONS, HOSPITALIZATIONS, AND DEATHS**

Infections initially fell after the Blueprint was adopted and restrictions were relaxed in many counties. However, like the rest of the country, California is now experiencing a massive surge in COVID-19 infections, hospitalizations, and deaths. Watt Decl. ¶ 93. On December 3, the State implemented a Regional Stay-At-Home Order, which, among other things, temporarily bars private gatherings and reduces retail capacity in regions with less than 15% ICU availability. *Id.* Ex. 12. The Order also closes campgrounds, prohibits non-essential travel, and bars in-person dining and the operation of hair salons and other personal services. *Id.* Outdoor worship services remain permitted, with no attendance limits.

### **IV. PROCEDURAL BACKGROUND**

The district court denied a previous request for a preliminary injunction in August, finding Plaintiffs unlikely to succeed on their Free Exercise claim, Dkt. 53, and this Court denied Plaintiffs' emergency motion for an injunction pending appeal. *Harvest Rock Church v. Newsom*, 977 F.3d 728, 730 (2020), *vacated*, 592 U.S. \_\_\_, 2020 WL 7061630 (Dec. 3, 2020). Plaintiffs next filed an emergency motion for an injunction in the Supreme Court. In the interim, the Supreme Court decided *Roman Catholic Diocese*. In response, Plaintiffs argued California's restrictions on worship services necessarily violate the Free Exercise Clause because the prohibition on indoor worship services is more restrictive than the

numerical caps enjoined in *Roman Catholic Diocese*.<sup>4</sup> Nevertheless, at Defendant's suggestion,<sup>5</sup> the Supreme Court vacated the district court's previous opinion and remanded to this Court with instructions to remand to the district court for further consideration. *Harvest Rock Church v. Newsom*, 592 U.S. \_\_\_, 2020 WL 7061630 (Dec. 3, 2020).

Upon remand, Plaintiffs again unsuccessfully moved for a preliminary injunction based on *Roman Catholic Diocese*. The district court denied the motion. Dkt. 77. It found that Plaintiffs were unlikely to succeed on the merits because California's restrictions on worship services do not warrant strict scrutiny as they do not discriminate against religious activities, *id.* at 6-8, because the "painstakingly tailored" Blueprint survived strict scrutiny, *id.* at 8-12, and because the balance of equities weighed against the relief sought, *id.* at 13.

First, the district court ruled that California's restrictions on worship services are not subject to strict scrutiny because "California treats houses of worship like or more favorably than similar secular institutions." Dkt. 77 at 7. The court noted that *Roman Catholic Diocese* "did not overrule" prior precedent subjecting neutral

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<sup>4</sup> See Appellants' Reply in Support of Emergency Application for Writ of Injunction at 9-17 (Dec. 1, 2020), available at <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/20a94.html>

<sup>5</sup> See Opposition To Emergency Application for Writ of Injunction at fns. 20, 29 (Nov. 30, 2020), available at <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/20a94.html>.

and generally applicable laws to rational basis review; “it applied it.” *Id.* at 6. It also stressed that in contrast to the Blueprint, which allows worship services with unlimited numbers outside, the New York Orders considered in *Roman Catholic Diocese* “made no exceptions for outdoor religious worship” and that the Nevada Directive considered by this Court in *Calvary Chapel Dayton Valley v. Sisolak*, 2020 WL 7350247, imposed a fifty-person cap on worship services outdoors. *Id.* at 6-7.

Second, the court ruled that California’s restrictions satisfy strict scrutiny because California has a compelling interest in curbing the spread of COVID-19, which is now the world’s deadliest infectious disease, and the State has “tailored its Blueprint restrictions to the specific mechanism of COVID-19 transmission.” Dkt. 77 at 8-9. The State’s restrictions on worship services, it found, are similar or more lenient than those on similar secular activities. *Id.* at 10. Relying on expert testimony submitted by the State, the court further determined that each of the activities that Plaintiffs identified as receiving more favorable treatment is safer than indoor worship. *Id.* at 11 (shopping at grocery stores and big box stores); *id.* (shopping centers, hotels, laundromats and liquor stores); *id.* (personal care services); *id.* at 11-12 (warehouses factories and film production). The district court then concluded that “[i]f ‘narrowly tailored’ does not mean based on the specific mechanism of COVID-19 infection with sliding levels of restrictions

based on scientific likelihood of viral spread in any given scenario, it means nothing.” *Id.* at 12.

Finally, finding “compelling evidence” that the injunction requested by Plaintiffs would harm the public interest by “straining already-stressed public health infrastructure and filling already-packed ICUs,” the court found that the balance of equities weighed against an injunction. *Id.* at 13.

### STANDARD OF REVIEW

In seeking an injunction pending appeal, Plaintiffs bear a heavy burden to show: (1) a strong likelihood of success on the merits, (2) irreparable injury if preliminary relief is not granted, (3) a balance of hardships in their favor, and (4) advancement of the public interest. *Alaska Conservation Council v. U.S. Army Corps of Engineers*, 472 F.3d 1097, 1100 (9th Cir. 2006).

### ARGUMENT

#### **I. CALIFORNIA’S RESTRICTIONS ON WORSHIP SERVICES ARE BASED ON NEUTRAL AND GENERALLY APPLICABLE REQUIREMENTS WHICH ARE SUBJECT TO RATIONAL BASIS REVIEW.**

This Court has previously ruled in this case that California’s restrictions on worship services to combat the spread of COVID-19 do not discriminate against religious activities.<sup>6</sup> The evidence presented by the State on remand confirmed this

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<sup>6</sup> *Harvest Rock Church v. Newsom*, 977 F.3d 728, 730 (2020); *see also S. Bay United Pentecostal Church v. Newsom*, 959 F.3d 938, 939 (9th Cir. 2020) (finding Free Exercise claim unlikely to succeed); *Gish v. Newsom*, No. 20-55445 (continued...)

ruling, showing that its COVID-19 restrictions are based on neutral and generally applicable criteria assessing the transmission risk of secular as well as religious activities and that, far from imposing especially harsh limits on worship services, the restrictions are proportional to that risk. Plaintiffs made no attempt to rebut this evidence. Instead, they asserted that the Supreme Court in *Roman Catholic Diocese* and this Court in *Dayton Valley* adopted sweeping new rules requiring strict scrutiny based solely on the severity of the restrictions imposed on worship services without regard to the neutral standards from which they were derived. But *Roman Catholic Diocese* and *Dayton Valley* did not overrule prior decisions and completely transform Free Exercise analysis in the manner Plaintiffs assert.

**A. *Roman Catholic Diocese* Applied Rather Than Overruled Prior Supreme Court Decisions And Does Not Subject California’s Restrictions on Worship Services to Strict Scrutiny.**

Plaintiffs argue that California’s restrictions are subject to strict scrutiny because they impose a “total prohibition on religious worship services” in many counties and thus are more severe than New York’s restrictions at issue in *Roman Catholic Diocese*. Mot. vi, 7, 8, 13. In fact, however, California does not prohibit all religious worship services in any county; to the contrary, as the district court

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(9th Cir. May 7, 2020) (denying injunction pending appeal); *South Bay United Pentecostal Church v. Newsom*, No. 20-56358, \_\_ F.3d \_\_, 2020 WL \_\_\_\_ (9th Cir. Dec. 24, 2020); *Gish v. Newsom*, Nos. 20-55445, 20-56324 (9th Cir. Dec. 23, 2020).



observed, California’s Blueprint offers something that the New York’s restrictions struck down in *Roman Catholic Diocese* did not: “the ability to legally congregate in unlimited numbers for worship—so long as that worship occurs outside.” Dkt. 77 at 6. Moreover, contrary to Plaintiffs’ suggestion, *Roman Catholic Diocese* did not subject New York’s restrictions to strict scrutiny solely because of their severity, which it could have done only by overruling long-standing precedent applying rational basis review to laws that are neutral and generally applicable. As the district court also observed, far from overruling this precedent, *Roman Catholic Diocese* applied it, *id.*, and the Supreme Court’s reasons for applying strict scrutiny there are absent here.

In *Roman Catholic Diocese*, the Supreme Court enjoined some of the emergency restrictions imposed on worship services by New York. Specifically, the Supreme Court enjoined the state Initiative’s “10- and 25-person occupancy limits” but left untouched the maximum capacity restrictions on worship services. *Roman Catholic Diocese*, 2020 WL 6948354, at \*1.

In ruling that plaintiffs were likely to show these “very severe” numerical caps unconstitutional, the Court did not overrule its prior decisions holding that neutral and generally applicable laws are subject to rational basis review, but rather expressly relied upon them. *Id.* at \*1 (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 533 (1993)). First, the Court observed, “statements

made in connection with the challenged rules can be viewed as targeting the ultra-Orthodox Jewish community.” *Id.* (quotation omitted). Second, even setting aside those statements, New York’s regulations were not neutral “because they single out houses of worship for especially harsh treatment.” *Id.*

In particular, the Court noted that in the New York Initiative’s red zones, “while a synagogue may not admit more than 10 persons, businesses categorized as ‘essential’ may admit as many people as they wish.” *Id.* at \*2; *see also id.* (noting that the list of “essential” businesses is “not limited to those [services] that can be regarded as essential”). “The disparate treatment,” the Court continued, is “even more striking in an orange zone” because there houses of worship are limited to 25 persons but “even non-essential businesses may decide for themselves how many people to admit.” *Id.*

Contrary to Plaintiffs’ repeated suggestions, Mot. at vii, 7, 9, 13, 20-21, *Roman Catholic Diocese* does not subject California’s restrictions on worship services to strict scrutiny merely because Plaintiffs contend—wrongly in light of the available of outdoor services with unlimited attendance—that they are more severe than the numerical caps considered in that decision. Indeed, shortly after *Roman Catholic Diocese*, Plaintiffs asked the Supreme Court to enjoin California’s restrictions on this basis, and the Supreme Court declined to do so. *See Harvest Rock Church*, 592 U.S. \_\_\_, 2020 WL 7061630. Instead, it remanded the case to

this Court with instructions “to remand to the *District Court* for further consideration in light of *Roman Catholic Diocese*.” *Id.* (emphasis added). Thus, *Roman Catholic Diocese* requires an examination of the grounds underlying California’s restrictions, not a mechanical comparison based solely on whether California’s restrictions are more severe on their face than New York’s.

As the district court recognized after considering those grounds, this case is clearly distinguishable. Unlike *Roman Catholic Diocese*, in this case “[t]here are no statements indicating religious animus.” Dkt. 77 at 7 n.7. Additionally, California’s COVID-19 restrictions do not single out religious activity for especially harsh treatment. *Id.* at 8. Far from singling out houses of worship, California’s Blueprint restricts worship services based on the same neutral and generally applicable criteria applied to secular activities: it assesses the risk of spreading COVID-19 posed by an activity based the number of people involved, the nature of the activity, its duration, the ability to employ precautions such as masks, and ventilation. *See* Grabarsky Decl., Ex. 5, pp. 6-7. The application of such objective, science-based criteria does not trigger strict scrutiny because under the precedent applied by the Supreme Court in *Roman Catholic Diocese* the Free Exercise Clause is violated only when a law “discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons.” *Lukumi*, 508 U.S. at 533, 543.

Nor does California impose especially harsh treatment on religious activity. To the contrary, the restrictions produced from California's objective analysis of transmission risk are proportional to the risk posed by worship services. In other words, California's Blueprint places worship services in a continuum of restrictions. It applies similar restrictions to closely analogous congregational activities such as protests, movie screenings, and college lectures as well as restaurants, which pose a similar transmission risk. Watt Decl. ¶ 86; Rutherford Decl. ¶ 107. Activities posing greater transmission risks such as concerts and spectator sporting events, fitness centers, bars, entertainment centers, and cardrooms are subject to more stringent restrictions. *See id.*; Grabarsky Decl. Ex. 7. Activities posing lower risks, such as museums, retail stores and shopping malls are subject to less stringent restrictions, and activities posing even lower risk are treated even more leniently. *See id.*

This is all that *Lukumi*, the precedent applied in *Roman Catholic Diocese*, requires. Under *Lukumi*, in determining whether a law is neutral and of general applicability, courts must examine whether the law treats religious conduct less favorably than “*analogous non-religious conduct*.” *Lukumi*, 508 U.S. at 531-32, 546 (emphasis added). As explained, under Blueprint California applies the same restrictions on indoor operations and attendance to non-religious conduct such as protests, movies, college lectures, and restaurants that it finds the most closely

analogous in terms of transmission risk. Moreover, because the restrictions imposed by the Blueprint are proportional to transmission risk, less closely analogous activities such as museums, retail, and shopping malls are treated similarly as well, and there is no discrimination triggering strict scrutiny under *Lukumi* or *Roman Catholic Diocese*.

**B. This Court’s Decision in *Dayton Valley* Does Not Subject California’s Restrictions to Strict Scrutiny.**

Plaintiffs also rely on *Dayton Valley*, and a related unpublished order in *Calvary Chapel Lone Mountain v. Sisolak*, 2020 WL 7364797 (9th Cir. Dec. 15, 2020). This reliance is misplaced. Although *Dayton Valley* stated in passing that *Roman Catholic Diocese* “arguably represented a seismic shift in Free Exercise law,” *Dayton Valley*, 2020 WL 7350247, at \*3, it did not explain how the law shifted, and it did not suggest that *Roman Catholic Diocese* overruled *Lukumi*. To the contrary, *Dayton Valley* expressly recognized that the Supreme Court applied *Lukumi*, *id.* at \*3, and it did not purport to depart from any of this Court’s decisions applying *Lukumi*, including *Stormans, Inc. v. Wiesman*, 794 F.3d 1064 (9th Cir. 2015), which requires courts to examine “*comparable* secular conduct” in determining whether a law burdening religious activity is neutral and generally applicable. *Id.* at 1079 (emphasis added).

Plaintiffs assert that the restrictions found likely to violate the Free Exercise Clause in *Dayton Valley* were less restrictive than the “total prohibition” imposed

by California's Blueprint in Tier 1. Mot. at 9. That is wrong. While the Nevada restrictions prohibited more than 50 people from gathering for worship services "in any indoor *or outdoor* areas," *Calvary Chapel Dayton Valley v. Sisolak*, 2020 WL 4260438, at \*2 (D.Nev. June 11, 2020) (emphasis added), under California's Blueprint "Plaintiffs and other religious institutions located in Tier 1 may gather as many worshippers in person as they please for outdoor services." Dkt. 77 at 7.

Moreover, *Dayton Valley* found such disparate treatment because of the broad categories into which Nevada grouped secular activities. Nevada imposed a 50% capacity limit on a broad range of activities, including retail businesses, bowling alley, arcades, gyms, restaurants, breweries, wineries, and casinos, but imposed a 50-person cap on indoor worship services. *Calvary Chapel Dayton Valley*, 2020 WL 7350247 at \*2. Thus, while the 50% capacity limit imposed on casinos permitted thousands of people to congregate for hours around gaming tables and slot machines drinking alcohol, Nevada's Directive allowed only 50 people to gather for a worship service. *Dayton Valley* therefore concluded that "the Directive treats numerous secular activities and entities *significantly better* than religious worship services" and that this disparate treatment triggers strict scrutiny. *Id.* at \*4.

There is no such disparate treatment in California's Blueprint. The Blueprint subjects most of the activities whose treatment *Dayton Valley* found troubling to

the same, if not, greater restrictions than worship services. For example, restaurants are subject to the exact same restrictions as worship services. Grabarsky Decl. Ex. 7. In addition, while the Blueprint permits indoor worship services in Tier 2 and in Tier 3 subjects them to a limit of either 50% capacity or 200 persons, it prohibits cardrooms from operating indoors in Tier 2 and imposes a 25% capacity limit in Tier 3. *Id.*<sup>7</sup> Similarly, bowling alleys are not permitted to open until Tier 3 and then are subject to a 25% capacity limit, and arcades are not permitted to open until Tier 4. *Id.*<sup>8</sup> Thus, none of the disparate treatment found in *Dayton Valley* is present here.<sup>9</sup>

**C. Unrebutted Expert Testimony Submitted on Remand Confirms that California’s Restrictions on Worship Services Are Based on Neutral and Generally Applicable Risk-Based Criteria.**

The evidence submitted on remand confirms that California’s restrictions on worship services are based on neutral and generally applicable criteria and

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<sup>7</sup> The Blueprint does not regulate casinos because in California casinos are permitted only on tribal lands, which are not subject to most state regulation. See *Great W. Casinos, Inc. v. Morongo Band of Mission Indians*, 74 Cal. App. 4th 1407, 1426 (1999).

<sup>8</sup> The Blueprint imposes less stringent restrictions on retail businesses than on worship services, Grabarsky Decl. Ex. 7, but nothing in *Dayton Valley* suggests that this Court found disparate treatment based solely on the Directive’s more lenient treatment of retail businesses. Moreover, this treatment is justified because shopping creates less transmission risk and restrictions imposed on retail are proportional to this risk. See *infra*, p. 23.

<sup>9</sup> Moreover, unlike California, which has submitted extensive evidence concerning comparative transmission risks, Nevada presented no such evidence.

therefore should be subject to rational basis review. The State submitted testimony from three highly qualified experts, which was un rebutted because Plaintiffs chose not to submit any expert testimony. This testimony demonstrates that, far from discriminating against religion, these restrictions are consistent with those imposed on secular activities.

In keeping with established public health practice, the Blueprint is part of a layered approach to limiting the spread of COVID-19. Declaration of Michael Stoto, Dkt. 66-3 (“Stoto Decl.”) ¶¶ 13, 21; Watt Decl. ¶ 100. To reduce transmission risk, California has implemented statewide precautions such as face covering and physical distancing requirements and a prohibition on indoor singing and chanting, and has issued industry-specific guidelines requiring modifications reducing the risk of specific activities. Rutherford Decl. ¶¶ 51-52, 71-76; Watt Decl. ¶¶ 47-48, 50-53, 64. While these measures reduce transmission risk, they do not eliminate it. Rutherford Decl. ¶¶ 75, 106; Watt Decl. ¶¶ 38, 70. Accordingly, for activities such as worship services in which an unacceptably high risk of transmission remains, the Blueprint imposes attendance limits. Rutherford Decl. ¶51; Watt Decl. ¶¶ 44, 55-56, 70, 83.

The Blueprint’s restrictions are based on neutral assessment of transmission risk remaining after statewide and industry-specific guidelines are applied. Watt



Decl. ¶ 83. In addition, this risk is assessed based on objective criteria specified in the Blueprint:

- Ability to accommodate face covering wearing at all times (e.g. eating and drinking would require removal of face covering)
- Ability to physically distance between individuals from different households
- Ability to limit the number of people per square foot
- Ability to limit duration of exposure
- Ability to limit amount of mixing of people from differing households and communities
- Ability to limit amount of physical interactions of visitors/patrons
- Ability to optimize ventilation (e.g. indoor vs outdoor, air exchange and filtration)
- Ability to limit activities that are known to cause increased spread (e.g. singing, shouting, heavy breathing; loud environs will cause people to raise voice)

Grabarsky Decl. Ex. 5.

Based on this objective analysis, California imposes the same restrictions on indoor worship services as on other indoor congregate activities such as movies, protests, and college lectures that pose similarly heightened transmission risks.

Rutherford Decl. ¶ 63; Watt Decl. ¶ 86; *see also* Rutherford Decl. ¶¶ 101-10

(explaining the combination of factors that makes worship services especially

risky).<sup>10</sup> Restaurants, which pose a similar risk, are subject to the same restrictions. Watt Decl. ¶ 86.

Other activities share some but not all of the characteristics of worship services and therefore pose a lower risk of transmission are subject to proportionately lesser restrictions. For example, shopping in retail stores and malls may draw large numbers of people together, but shoppers generally intend to get in and out as quickly as possible, and therefore they are unlikely to come into contact for more than a brief period of time. Dkt. 77 at 11; Rutherford Decl. ¶ 113; Watt Decl. ¶ 104. Such transient interactions are less likely to transmit the virus because an uninfected person needs to receive a large enough dose for the virus to overcome the body's defenses and cause infection. *Id.* Grocery stores pose even less of a threat because they are almost always equipped with high-functioning air-conditioning units to preserve perishable products and thus have better ventilation than houses of worship. Dkt. 77 at 11; Rutherford Decl. ¶ 114. Thus, retail stores are subject to more lenient indoor operation and capacity restrictions than worship

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<sup>10</sup> Studio arts and laboratory classes are exempted from these restrictions because such classes involve individualized conduct which by their nature permit substantial distancing. Rutherford Decl. ¶ 129. Primary and secondary schools are subject to different restrictions because the applicable guidance requires them to be conducted in small, stable cohorts of students, which involves less mixing and thus impose a lower transmission risk. *Id.*

services, and grocery stores are only subject to capacity restrictions under the Regional Stay-at-Home Order. Grabarsky Decl., Exs. 5, 7.

Hair salons and personal care services also share a characteristic of worship services—they bring individuals into close proximity for extended periods—but they do not pose as great a transmission risk as worship services because they lack another characteristic that makes such services so risky: the gathering together of large numbers of people. Dkt 77 at 11; Rutherford Decl. ¶¶ 62, 120. The risk posed by personal care services is also reduced by industry guidance applicable to many such services, such as requirements for screening, enhanced distancing, and secondary barriers such as face shields or safety goggles. Dkt. 77 at 11; Rutherford Decl. ¶ 120. Limited services such as laundromats and garages pose even less risk because they neither involve large numbers of people nor bring them into close contact. Rutherford Decl. ¶ 117; Watt Decl. ¶ 104

Although factories and warehouses may bring large numbers of people to a single location, workers in factories and warehouses are rarely in close proximity for extended periods of time, and employers are required to install engineering controls such as plexiglass windows when they are. Dkt. 77 at 11-12; Watt Decl. ¶ 103. In addition, factories and warehouses are closed systems in which employers determine who is permitted “in the bubble” and thus involve relatively stable groups, and employers are required to screen and observe safety precautions,

including work-place specific COVID-19 prevention plans. Dkt. 77 at 11; Rutherford Decl. ¶ 121; Watt Decl. ¶ 103. Film production similarly involves closed systems, and is subject to binding labor agreements that impose extensive protections, including increased ventilation, enhanced distancing, and testing up to three times a week depending on an employee's position. Dkt. 77 at 11-12; Rutherford Decl. ¶ 121; Grabarsky Decl. Exs. 44-45.<sup>11</sup>

Further, while there may be room for debate about the State's risk assessments, as Chief Justice Roberts explained, courts should defer to the judgment of public health officials on uncertain medical and scientific issues:

When [politically accountable] officials “undertake[ ] to act in areas fraught with medical and scientific uncertainties,” their latitude “must be especially broad.” *Marshall v. United States*, 414 U.S. 417, 427 (1974). Where those broad limits are not exceeded, they should not be subject to second-guessing by an “unelected federal judiciary,” which lacks the background, competence, and expertise to assess public health and is not accountable to the people.

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<sup>11</sup> Contrary to the dissent's assumption, *Harvest Rock*, 977 F.3d at 736 n.8, professional sports are not allowed to practice and engage in competition without restriction. Instead, they are subject to approval by county public health authorities, <https://files.covid19.ca.gov/pdf/guidance-outdoor-live-professional-sports--en.pdf>, which has been withheld in some high-profile instances. Branch, S.F. Chronicle, Nov. 28, 2020, “49ers Cannot Play at Levi's Stadium Under Santa Clara County's Coronavirus Restrictions,” available at <https://www.sfchronicle.com/49ers/article/49ers-cannot-play-at-Levi-s-Stadium-under-Santa-15760248.php>. Moreover, like film production, professional sports are subject to stringent industry requirements that reduce the transmission risk to participants. See, e.g., NFL-NFLPA COVID-19 Protocols For 2020 Season, at <https://static.www.nfl.com/image/upload/v1604923568/league/qj8bnhpzrnjevze2p mc9.pdf> at p. 61 (mandating daily testing)

*South Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1613-14 (2020) (Roberts, C.J., concurring) (citations altered).

Nothing in *Roman Catholic Diocese* suggests an intent to depart from this well-established principle. Indeed, a majority of the Supreme Court expressly reaffirmed Chief Justice Roberts’ recognition that federal courts should defer to state and local authorities during the pandemic because “[t]he Constitution ‘principally entrusts the safety and health of the people to the politically accountable officials of the States.’” *Id.* at \*8 (Kavanaugh, J., concurring) (quoting *South Bay*, 140 S. Ct. at 1613 (Roberts, C.J., concurring)); *see also id.* at \*9 (Roberts, C.J., dissenting) (reaffirming position in *South Bay*); *id.* at \*12 (Breyer, J., dissenting) *id.* at \*12 (Sotomayor, J., dissenting). Thus, Plaintiffs have failed to show a likelihood of success in showing any disparate treatment and California’s restrictions therefore should be subject to rational basis review, which they easily satisfy because they advance the State’s interest in combatting the spread of COVID-19.<sup>12</sup>

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<sup>12</sup> Although Plaintiffs continue to object to the State’s prohibitions against indoor singing and chanting and indoor gatherings for Bible study, Mot. at 1, 5, they do not offer any argument in support of these objections and thus fail to establish any likelihood of success on them. In conclusory fashion, Plaintiffs also renew their “internal[] discrimination” argument, Mot. at 16, but they are unable to point to anything in *Roman Catholic Diocese* or *Dayton Valley* supporting this argument and thus fail to offer any reason why it should succeed now.

**II. ALTERNATIVELY, THE MOTION SHOULD BE DENIED BECAUSE THE BLUEPRINT IS NARROWLY TAILORED TO FURTHER A COMPELLING STATE INTEREST.**

Even if the Blueprint and Regional Stay-At-Home orders were subject to strict scrutiny, Plaintiffs' claims still would be unlikely to succeed because, as both the court below and the Southern District of California have recognized, the State's restrictions on worship services are narrowly tailored to serve its compelling interest in combatting the spread of COVID-19.<sup>13</sup>

The district court correctly found that the "State has a compelling interest in curbing the spread of what is now the world's deadliest infectious disease."

Dkt. 77 at 8. This is undoubtedly a compelling interest. *Roman Catholic Diocese*, 2020 WL 6948354, at \*2; *Calvary Chapel*, 2020 WL 7350247 at \*4.

The district court also correctly held that the Blueprint is narrowly tailored to serve this compelling interest. Indeed, the restrictions imposed on worship services "are precisely focused on the method by which the virus is transmitted: viral droplets expelled into the air." Dkt. 77 at 9. As explained, indoor worship, like movies, concerts, and lectures, poses an acute risk of transmission notwithstanding industry-specific guidance and across-the-board precautions such as masking and distancing. Rutherford Decl. ¶¶ 92, 101-06; Watt Decl. ¶¶ 44, 46,

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<sup>13</sup> See *South Bay United Pentecostal Church v. Newsom*, 2020 WL 7388974, at \*8-\*13 (S.D. Cal. Dec. 21, 2020).

67; *see also* Watt Decl. ¶¶ 98-100 (describing measures like distancing, masks and cleaning protocols as “good . . . but insufficient”). The Blueprint addresses this residual risk by prohibiting indoor (but not outdoor) services in Tier 1 and by limiting the number of people that may gather together indoors for a worship service in other tiers. Grabarsky Decl. Ex. 7. Moreover, because transmission risk is in part a function of the prevalence of COVID-19 in the community, Stoto Decl. ¶ 10, the Blueprint relaxes these restrictions as counties move into tiers with lower spread. Grabarsky Decl. Ex. 7. Thus, California has considered, and attempted to implement, less restrictive alternatives, but has determined that in Tier 1 counties indoor worship, like concerts, movies, and lectures, must be prohibited in order to adequately mitigate the risk of community spread.

California has also continuously fine-tuned these restrictions to accommodate the important interests of its residents in participating in religious services. *South Bay*, 2020 WL 6081733, at \*13. Even at the beginning of the pandemic, clergy and congregants were exempted from the State’s general stay-at-home order so they could conduct and attend remote or drive-in services. *See Cross Culture Christian Center v. Newsom*, 445 F. Supp. 3d 758, 766 n.2 (E.D. Cal. 2020). In May, the State allowed services to resume with attendance up to 25% capacity or 100 persons, and later without any attendance limits outdoors, Watt Decl. ¶ 66-70, which “enables people to practice their faith in large groups in the context in which

it may be safe to do so.” Dkt. 77 at 10. In July, when infections resurged, the State tightened restrictions, prohibiting indoor worship services in counties with elevated infection rates. Watt Decl. ¶¶ 72-81. And, in turn, in late August, the State relaxed these restrictions by adopting the Blueprint’s more nuanced and lenient approach, which bars indoor worship services in Tier 1 counties, but applies increasing capacity caps in Tiers 2 through 4. Grabarsky Decl. Ex. 7.

To paraphrase the district court, “[i]f ‘narrowly tailored’ does not mean based on the specific mechanism of Covid-19 infection with sliding levels of restriction based on scientific likelihood of viral spread in any given scenario,” making accommodations such as outdoor services where possible and considering less restrictive alternatives, “it means nothing.” Dkt. 77 at 12.

Far from challenging this conclusion, Plaintiffs appear to assert that no restrictions at all should be imposed because, they claim, they have “not been the source of any alleged outbreaks” and will comply with safety protocols. Mot. at 23-24. That is by no means clear. Dkt. 45-2 (stating that Plaintiffs’ Pasadena church “is not operating in compliance with” state and local policies regarding “indoor services and the wearing of protective masks along with the requirement of social distancing”). Even more fundamentally, Plaintiffs do not—and cannot—point to any authority requiring the State to wait until an outbreak occurs before imposing restrictions designed to prevent the spread of a deadly infectious disease.



Thus, Plaintiffs have failed to show a likelihood of success even under strict scrutiny.

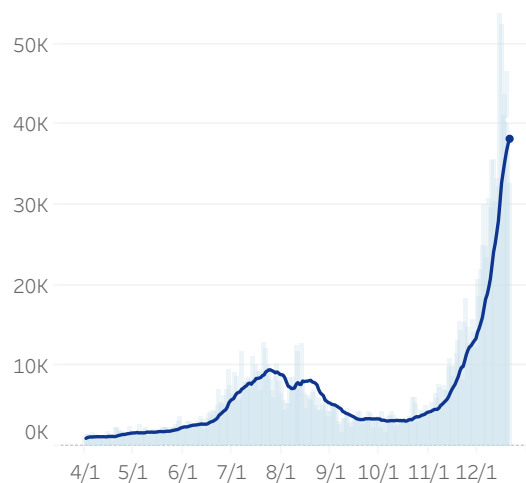
**III. THE INJUNCTION ALSO SHOULD BE DENIED DUE TO THE GRAVE DANGER OF ENJOINING COVID-19 RESTRICTIONS IN THE MIDST OF THE MASSIVE SURGE IN CASES, HOSPITALIZATIONS, AND DEATHS.**

Plaintiffs' request for an injunction should be denied for a separate and independent reason: the public interest and, by extension, the balance of equities weighs strongly against the injunction sought. The State agrees that Plaintiffs have a constitutionally protected interest in participating in indoor worship services and that, while permitted to attend outdoor services without attendance limits, they suffer some irreparable injury when prevented from attending services indoors. *See Roman Catholic Diocese*, 2020 WL 6948354, at \*3. But "the right to practice religion does not include liberty to expose the community . . . to communicable disease," *Prince v. Massachusetts*, 321 U.S. 158, 166-167 (1944), and even if Plaintiffs could show a likelihood of success, they would not be entitled to equitable relief disrupting the State's efforts to combat COVID-19 when skyrocketing infections threaten to overwhelm the State's health system.

The State is at a critical moment. Two vaccines have been approved, and there is now some light at the end of the tunnel, but the pandemic is raging worse than it ever has. *See supra*, p. 9. California is now experiencing a massive surge

in COVID-19. Daily cases have skyrocketed, quadrupling in the last month to reach a seven-day average of more than 38,000:<sup>14</sup>

Daily New COVID-19 Cases

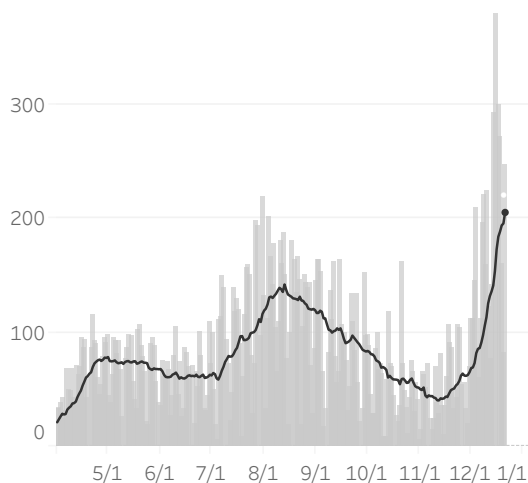


The increase in daily cases has been accompanied by an alarming increase in hospitalizations and deaths, the latter of which has quadrupled to a daily average of more than 200 and setting a record of 379 deaths in a single day last week:

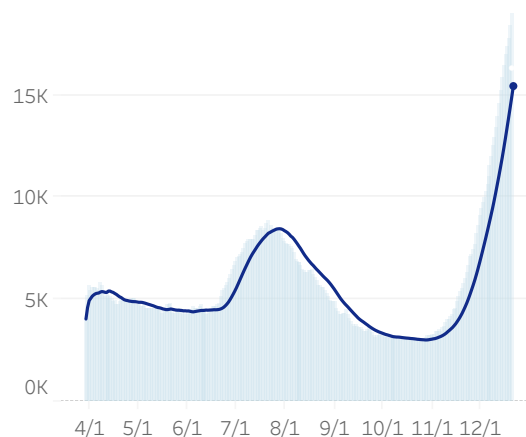
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<sup>14</sup> These charts are taken from <https://covid19.ca.gov/state-dashboard> (Dec. 22, 2020).

Daily COVID-19 Deaths



COVID-19 Hospitalized Patients



Ominously, the increased hospitalization rates have shrunk ICU availability to the disturbingly low level of *less than 2% statewide and 0% in Southern California, where Plaintiffs' primary church is located*.<sup>15</sup>

Available ICU Beds



<sup>15</sup> See <https://covid19.ca.gov/stay-home-except-for-essential-needs>.

As a consequence, there are now more than 200 people statewide dying each day, and nearly 150 in Los Angeles so that “[a] person now dies every 10 minutes in LA. County from COVID-19.”<sup>16</sup> Moreover, if infection rates rise further, people falling seriously ill from COVID-19 and other causes may be unable to receive the intensive treatments, such as ventilators, necessary to save their lives and prevent even more deaths. Watt Decl. ¶¶ 96-97.

The Court should not exacerbate this public health crisis by enjoining restrictions combatting the spread of COVID-19. As unrebutted expert testimony showed, worship services combine a number of factors that create an especially great transmission risk and, indeed, frequently have become “super-spreader” events. Rutherford Decl. ¶¶ 101-110; Watt Decl. ¶¶ 46, 67. Nevertheless, Plaintiffs seek sweeping relief that would permit them to immediately conduct worship services indoors, including singing and chanting, with unlimited numbers of people attending, at all of their more than 160 churches in California. As the district court found, “[i]f Plaintiffs were to immediately resume numerically uncapped indoor worship, it is likely that this indoor worship—like any indoor activity involving members of multiple households—would contribute to the spread of Covid-19, straining already-stressed public health infrastructure and

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<sup>16</sup> County of Los Angeles Department of Public Health, Dec. 24, 2020, at <http://publichealth.lacounty.gov/phcommon/public/media/mediapubdetail.cfm?unit=media&ou=ph&prog=media&cur=cur&prid=2877&row=25&start=1>

filling already-packed ICUs.” Dkt. 77 at 13. This tilts the public interest and the balance of equities decisively against the relief sought.

### CONCLUSION

The motion should be denied.

Dated: December 28, 2020

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20-55907

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**HARVEST ROCK CHURCH, INC., and  
HARVEST INTERNATIONAL  
MINISTRY, INC., itself and on behalf of its  
member churches in California,**

Plaintiffs,

**v.**

**GAVIN NEWSOM, in his official capacity  
as Governor of the State of California,**

Defendant.

### **STATEMENT OF RELATED CASES**

The following cases pending before this Court are related to the present matter because they also involve challenges to COVID-19-related guidelines for in-person religious worship services: *Gish v. Newsom*, No. 20-55445, 20-56324; *South Bay United Pentecostal Church v. Newsom*, No. 20-56358.

Dated: December 28, 2020

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### **CERTIFICATE OF COMPLIANCE**

The brief is 7,353 words excluding the portions exempted by Rule 32(f).

Concurrent with this brief Defendant has filed a motion to exceed the word limit.

The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

Dated: December 28, 2020

/s/ Todd Grabarsky  
TODD GRABARSKY



### **CERTIFICATE OF SERVICE**

I hereby certify that on December 28, 2020, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: December 28, 2020      /s/ Todd Grabarsky  
TODD GRABARSKY