

No. _____

In the Supreme Court of the United States

CALVARY CHAPEL SAN JOSE, AND MIKE MCCLURE,
Petitioners,

v.

**THE PEOPLE OF THE STATE OF CALIFORNIA, COUNTY
OF SANTA CLARA, AND SARA H. CODY, M.D., IN HER
OFFICIAL CAPACITY AS HEALTH OFFICER FOR THE
COUNTY OF SANTA CLARA,**
Respondents.

On Petition for Writ of Certiorari to the
California Court of Appeal, Sixth Appellate District

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

At issue in this case is the ability of government to referee religious services in a house of worship.

Government officials in California imposed COVID rules governing any “business,” which was defined to include churches. These rules – governing such matters as social distancing, masking, and capacity ceilings – contained multiple exemptions, but did not allow Petitioners Calvary Chapel San Jose and Pastor Mike McClure to conduct religious services in accord with their religious beliefs. County officials sought injunctive relief and contempt sanctions for the church’s noncompliance (both of which were overturned in prior proceedings), then sought nearly three million dollars in fines. The state courts upheld fines in excess of a million dollars. The four questions presented are:

1. Do COVID restrictions that contain multiple exceptions, exceptions permitting comparable risks of viral transmission, trigger strict scrutiny under *Employment Division v. Smith*, 494 U.S. 872 (1990), because they are not “generally applicable”?

2. Should this Court hold that the church autonomy doctrine, which provides an exception to *Smith*, includes not just a “ministerial exception” but also a “liturgical exception”?

3. If *Smith* does *not* require strict scrutiny in this case and does *not* include a liturgical exception, but instead allows governments to micromanage religious services, should this Court overrule *Smith* as incompatible with a proper reading of the Free Exercise Clause?

4. Is the imposition of over a million dollars in fines on a church for its adherence to its religious requirements for worship services a violation of the Excessive Fines Clause of the Eighth Amendment?

CORPORATE DISCLOSURE STATEMENT

Petitioner Calvary Chapel San Jose has no parent corporation, and no publicly held company owns 10% or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

Superior Court of California, County of Santa Clara:

People of the State of California v. Calvary Chapel San Jose, No. 20CV372285 (Santa Clara Cnty. Super. Ct.) (Apr. 7, 2023) [order granting summary adjudication]

People of the State of California v. Calvary Chapel San Jose, No. 20CV372285 (Santa Clara Cnty. Super. Ct.) (Feb. 6, 2024) [order granting unopposed motion to set aside dismissal of entire case and dismissing second cause of action with prejudice]

People of the State of California v. Calvary Chapel San Jose, No. 20CV372285 (Santa Clara Cnty. Super. Ct.) (Feb. 6, 2024) [judgment]

Court of Appeal of California, Sixth Appellate District:

People v. Calvary Chapel San Jose, Nos. H048708, H048734, H048947 (Aug. 15, 2022) [decision]

People v. Calvary Chapel San Jose, No. H051860 (Apr. 15, 2025) [decision]

People v. Calvary Chapel San Jose, No. H051860 (May 6, 2025) [rehearing denial]

Supreme Court of California:

People v. Calvary Chapel San Jose, No. S291092 (June 30, 2025) [briefing order]

People v. Calvary Chapel San Jose, No. S291092 (July 16, 2025) [review denied]

U.S. District Court:

Calvary Chapel San Jose v. Cody, No. 20-cv-03794-
BLF (Nov. 5, 2020)

Calvary Chapel San Jose v. Cody, No. 20-cv-03794-
BLF (Dec. 18, 2020)

Calvary Chapel San Jose v. Cody, No. 20-cv-03794-
BLF (Sept. 27, 2021)

Calvary Chapel San Jose v. Cody, No. 20-cv-03794-
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Calvary Chapel San Jose v. Cody, No. 20-cv-03794-
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Calvary Chapel San Jose v. Cody, No. 20-cv-03794-
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Calvary Chapel San Jose v. Cody, No. 20-cv-03794-
BLF (VKD) (Sept. 7, 2022)

Calvary Chapel San Jose v. Cody, No. 20-cv-03794-
BLF (Oct. 6, 2022)

Calvary Chapel San Jose v. Cody, No. 20-cv-03794-
BLF (Mar. 10, 2023)

U.S. Court of Appeals for the Ninth Circuit:

Calvary Chapel San Jose v. County of Santa Clara,
No. 23-15445 (June 1, 2023)

Calvary Chapel San Jose v. County of Santa Clara,
No. 23-15445 (Apr. 12, 2024)

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OPINIONS BELOW

The prior ruling of the California Court of Appeal is *People v. Calvary Chapel San Jose*, 82 Cal. App. 5th 235, 298 Cal. Rptr. 262 (2022). Pet. App. C. The Superior Court of Santa Clara County's order granting summary adjudication is unpublished. Pet. App. B. The affirmance by the California Court of Appeal is unpublished but available as *People v. Calvary Chapel San Jose*, 2025 Cal. App. Unpub. LEXIS 2244 (Apr. 15, 2025). Pet. App. A. The order of the Supreme Court of California allowing an amended reply is unpublished but available as *People v. Calvary Chapel San Jose*, 2025 Cal. LEXIS 4486 (June 30, 2025). The order of the Supreme Court of California denying review is unpublished but available as *People v. Calvary Chapel San Jose*, 2025 Cal. LEXIS 4419 (July 16, 2025).

JURISDICTION

The judgment of the California Court of Appeal was entered on April 15, 2025. That court denied rehearing on May 2, 2025. Pet. App. E. The Supreme Court of California denied a timely petition for review on July 16, 2025. On September 30, Justice Kagan extended to December 13, 2025, the time for filing a petition for certiorari. *Calvary Chapel San Jose v. California*, No. 25A366. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS

The First Amendment to the Constitution provides in relevant part:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof

U.S. CONST. amend. I.

The Eighth Amendment to the Constitution provides:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. CONST. amend. VIII.

INTRODUCTION

A government's prohibition of worship services, or dictating how such rituals are to be conducted, is something one would expect from the Soviet Union or Communist China. Government suppression of or interference with religious worship is anathema to American principles of religious liberty enshrined in the Constitution. Yet Respondents did exactly that in this case. Respondents sought – and obtained from the California state courts – more than a million dollars in fines to punish Petitioners for refusing to subject their religious worship to government micromanagement. But imposing massive fines on a house of worship and its pastor for following their

faith-based tenets governing religious rituals, especially when the government allows multiple secular exemptions to its restrictions, violates both the Free Exercise Clause and the Excessive Fines Clause. This Court should grant review.

STATEMENT OF THE CASE

While this case has an extended litigation history, the facts relevant to this petition are straightforward.

Respondent Santa Clara County imposed draconian restrictions related to the COVID pandemic, but those restrictions were riddled with exceptions.¹ Among other things, these restrictions told churches how to run their religious services. “Relevant here, the public health orders included orders restricting indoor gatherings and requiring face coverings, social distancing, and submission of a social distancing protocol by businesses, including churches.” *People v. Calvary Chapel San Jose*, 82 Cal. App. 5th 235, 240 (2022) (*CCSJ I*) (Pet. App. 94a).²

¹ See *infra* pp. 6-11.

² As the Superior Court noted,

A “Business,” . . . is defined by the Urgency Ordinance as “any for-profit, nonprofit, or educational entity, whether a corporate entity, organization, partnership, or sole proprietorship, and regardless of the nature of the service, the function it performs, or its corporate or entity structure.” Calvary is a domestic non-profit corporation operating a church . . . and thus qualifies as a “business” under the Urgency Ordinance.

Petitioners Calvary Chapel San Jose and its senior pastor Mike McClure (hereafter collectively “Calvary Chapel” or “CCSJ”) objected to those restrictions on religious grounds and did not comply. The County sought and obtained an *injunction* and then *contempt* sanctions against the church for its noncompliance, but – in light of this Court’s rulings in other cases involving COVID restrictions on churches – the California Court of Appeal reversed, holding that the injunction was unconstitutional, “void,” and incapable of supporting contempt sanctions. *Id.* at 258-59, 262 (Pet. App. 126a-127a, 132a).

We agree with Calvary Chapel that, as we have discussed, under the most recent [U.S.] Supreme Court rulings the prohibition on indoor gatherings in the November 24, 2020 modified restraining order and the preliminary injunction that effectively prohibited indoor worship services, while allowing certain secular indoor activities to occur, is unconstitutional on its face as a violation of the free exercise clause.

Id. at 262 (Pet. App. 132a).

But that did not stop the County. Instead, the County pursued *finis* against Calvary Chapel for failure to comply with the restrictions. The County sought fines in excess of \$2.8 million in state court and obtained a final judgment of \$1,228,700 in fines.

Order Granting Plaintiffs’ Mot. for Sum. Adjudication (Super Ct. Apr. 7, 2023) [Super. Ct. Sum. Adjud.] at 4 (citations omitted) (Pet. App. 53a).

People v. Calvary Chapel San Jose, 2025 Cal. App. Unpub. LEXIS 2244 at *16, *29 (Apr. 15, 2025) (*CCSJ II*) (Pet. App. 13a, 23a).³ Calvary Chapel appealed, but the California Court of Appeal affirmed the fines, *id.* at *60 (Pet. App. 48a), and denied rehearing, Pet. App. D. The Supreme Court of California denied discretionary review, Pet. App. E, and Calvary Chapel now seeks review in this Court.

In upholding the \$1,228,700 in fines, the lower court committed the following federal constitutional errors: First, California’s court of appeal held that the restrictions were generally applicable despite the numerous exceptions. Second, the very notion that government can dictate the details of religious worship is wholly inconsistent with the right to the Free Exercise of religion. While this argument was not available under the test of *Employment Division v. Smith*, 494 U.S. 872 (1990), this Court should now take the opportunity to hold that church autonomy under the First Amendment protects not just the selection of ministerial personnel (the “ministerial exception”) but also the conduct of liturgy itself. Finally, the imposition of more than a million dollars in fines on a church for adhering to its religious beliefs governing its worship and liturgy violates the Excessive Fines Clause.

Here are the details.

³ Respondents also seek over a million dollars in attorney fees and costs against Calvary Chapel and Pastor McClure. That request is currently stayed. Order (Superior Court Sept. 15, 2025) (vacating attorney fees hearing pending disposition by U.S. Supreme Court of this petition for certiorari).

1. Public Health Orders and Exemptions

From February 3, 2020, through June 21, 2021, the County issued various orders concerning COVID-19 safety measures that conflicted with Calvary Chapel’s religious beliefs and practices.⁴ *CCSJ II*, 2025 Cal. App. Unpub. LEXIS 2244 at *2-*7 (Pet. App. 2a-5a). These orders regulated various matters such as public gatherings, distancing, and face coverings. *Id.* at *37-*43 (Pet. App. 31a-35a). The restrictions, however, included multiple exemptions. For example, the County’s October 10, 2020 mandatory directive for collegiate and professional athletics stated: “Athletes and officials may remove their face coverings . . . while they are actively engaged in athletic activity.” *Id.* at *47 (Pet. App. 37a-38a). (Picture wrestlers, football linemen, and basketball players huffing and puffing in very close proximity to each other.)

As the state court of appeal recited, the “October 5, 2020 revised risk reduction order required face coverings to be worn as specified in the state’s June

⁴ Calvary Chapel’s religious objections to the restrictions are uncontested. *See, e.g.*, McClure Decl. (Cal. Super. Ct. Jan. 10, 2023) (¶6: “The Church’s religion requires it meet in person for the teaching of God’s Word, prayer, worship, baptism, communion, and fellowship.”; ¶12: “The face-mask mandate enforced from July 2020 through May 2021 also conflicted with the Church’s religious beliefs. The Church believes that Christians are to approach God with unveiled faces, beholding the glory of the Lord, and being transformed into the same image from one degree of glory to another, as outlined in 2 Corinthians 3:18.”). *See also* Pet. App. 54a (Super Ct. Sum. Adjud. at 4-5).

18, 2020 guidance for the use of face coverings,”⁵ *id.* at *38 (Pat. App. 31a), and that state guidance in turn contained multiple exceptions:

“The following individuals are exempt from wearing a face covering: [¶] **Persons age two years or under.** These very young children must not wear a face covering because of the risk of suffocation. [¶] **Persons with a medical**

⁵ Per the court, *id.* at *38-*39 (Pet. App. 31a-32a):

The June 18, 2020 state guidance states: “People in California must wear face coverings when they are in the high-risk situations listed below: [¶] Inside of, or in line to enter, any indoor public space; [¶] Obtaining services from the healthcare sector in settings including, but not limited to, a hospital, pharmacy, medical clinic, laboratory, physician or dental office, veterinary clinic, or blood bank; [¶] Waiting for or riding on public transportation or paratransit or while in a taxi, private car service, or ride-sharing vehicle; [¶] Engaged in work, whether at the workplace or performing work off-site, when [¶] Interacting in-person with any member of the public; [¶] Working in any space visited by members of the public, regardless of whether anyone from the public is present at the time; [¶] Working in any space where food is prepared or packaged for sale or distribution to others; [¶] Working in or walking through common areas, such as hallways, stairways, elevators, and parking facilities; [¶] In any room or enclosed area where other people (except for members of the person's own household or residence) are present when unable to physically distance; [¶] Driving or operating any public transportation or paratransit vehicle, taxi, or private car service or ride-sharing vehicle when passengers are present. When no passengers are present, face coverings are strongly recommended. [¶] While outdoors in public spaces when maintaining a physical distance of [six] feet from persons who are not members of the same household is not feasible.” (Fns. omitted.)

condition, mental health **condition**, or disability **that prevents wearing a face covering**. This includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance. [¶] **Persons** who are hearing impaired, or communicating with a person who is hearing impaired, **where the ability to see the mouth is essential for communication**. [¶] **Persons for whom wearing a face covering would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines**. [¶] **Persons who are obtaining a service involving the nose or face** for which temporary removal of the face covering is necessary to perform the service. [¶] **Persons who are seated at a restaurant** or other establishment that offers food or beverage service, **while they are eating or drinking**, provided that they are able to maintain a distance of at least six feet away from persons who are not members of the same household or residence. [¶] **Persons who are engaged in outdoor work or recreation** such as swimming, walking, hiking, bicycling, or running, when alone or with household members, and when they are able to maintain a distance of at least six feet from others. [¶] **Persons who are incarcerated**. Prisons and jails, as part of their mitigation plans, will have specific guidance on the wearing of face coverings or masks for both inmates and staff.”

Id. at *38-*40 (Pet. App. 32a-33a) (emphases added). The California Court of Appeal also referenced the May 18, 2021 safety measures order, which provided: “All persons must follow the health officer’s mandatory directive on use of face coverings.” *Id.* at *41 (Pet. App. 33a).⁶ That order likewise included a laundry list of exceptions:

“The following specific settings are exempt from face covering requirements: [¶] Persons in a car

⁶ The court of appeals quoted further, *id.* at *41-*42 (Pet. App. 33a-34a):

The mandatory directive on use of face coverings, effective May 19, 2021, stated that “[a]ll residents, businesses, and governmental entities must follow the California Department of Public Health’s guidance for use of face coverings . . . issued on May 3, 2021.” (Some capitalization omitted.) The California Department of Public Health’s (CDPH) May 3, 2021 guidance for use of face coverings stated: “1. For fully vaccinated persons, face coverings are not required outdoors except when attending crowded outdoor events, such as live performances, parades, fairs, festivals, sports events, or other similar settings. [¶] 2. For unvaccinated persons, face coverings are required outdoors any time physical distancing cannot be maintained, including when attending crowded outdoor events, such as live performances, parades, fairs, festivals, sports events, or other similar settings. [¶] 3. In indoor settings outside of one’s home, including public transportation, face coverings continue to be required regardless of vaccination status, except as outlined below. [¶] 4. As defined in the CDPH Fully Vaccinated Persons Guidance, fully vaccinated people can: [¶] Visit, without wearing masks or physical distancing, with other fully vaccinated people in indoor or outdoor settings; and [¶] Visit, without wearing masks or physical distancing, with unvaccinated people (including children) from a single household who are at low risk for severe COVID-19 disease in indoor and outdoor settings.” (Boldface & italics omitted.)

alone or solely with members of their own household, [¶] Persons who are working alone in a closed office or room, [¶] **Persons who are obtaining a medical or cosmetic service involving the nose or face** for which temporary removal of the face covering is necessary to perform the service, [¶] Workers who wear respiratory protection, or [¶] **Persons who are specifically exempted from wearing face coverings by other CDPH guidance.** [¶] The following individuals are exempt from wearing face coverings at all times: [¶] **Persons younger than two years old.** Very young children must not wear a face covering because of the risk of suffocation. [¶] **Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering.** This includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance. [¶] **Persons** who are hearing impaired, or communicating with a person who is hearing impaired, **where the ability to see the mouth is essential for communication.** [¶] **Persons for whom wearing a face covering would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines.”**

Id. at *40-*43 (Pet. App. 34a) (emphases added; parenthetical omitted).

In sum, the COVID restrictions denied religious worship comparable treatment in at least the

following respects: the restrictions had exceptions (1) for *medical* reasons but not for *religious* reasons, compare *Holt v. Hobbs*, 574 U.S. 352, 367-68 (2015) (prison allowed beards for medical reasons but not for religious reasons); (2) for engaging in *sports*, including *contact sports*, but not for engaging in *praise and worship*; (3) where needed to *communicate* but not where needed to *worship* in accord with one's beliefs; (4) where government officials determined in their *discretion that extending an exemption* was warranted, though no such exception was afforded to houses of worship; (5) to engage in *services* involving the viewing or use of the face, but not to participate in *religious services* that may involve the face, such as Communion; (6) for persons gathered for a *meal* but not persons gathered for a *commemoration of the Last Supper, a seder, or other religious ritual*; (7) for outdoor *work or recreation*, but not outdoor *religious services*; (8) when in a *prison*, but not in a *church*.

2. TRO/Injunction Action, Contempt Sanctions, and Reversal on Appeal

The unconstitutionality of allowing exceptions to government restrictions for *secular*, but not *religious*, reasons is not a new concept. This Court has already signaled the unconstitutionality of many COVID public health orders for precisely such disparate treatment. See *Tandon v. Newsom*, 593 U.S. 61 (2021); *Roman Catholic Diocese v. Cuomo*, 592 U.S. 14 (2020); *Harvest Rock Church v. Newsom*, 141 S. Ct. 889 (2020); *South Bay United Pentecostal Church v. Newsom*, 141 S. Ct. 716 (2021); *Gish v. Newsom*, 141

S. Ct. 1290 (2021); *Gateway City Church*, 141 S. Ct. 1460 (2021).

Indeed, in this very case, the state court of appeal held unconstitutional and “void” – in light of this Court’s rulings – restrictions being imposed on Calvary Chapel. *CCSJ I*.

In October 2020, Respondents State, County, and the County health officer (Dr. Cody) sued Petitioners Calvary Chapel and Pastor McClure alleging failure to comply with COVID health orders “such as avoiding indoor gatherings, wearing face coverings, keeping sufficient physical distance, and avoiding singing or shouting near others while indoors.” *CCSJ I*, 82 Cal. App. 5th 235, 241 (2022) (Pet. App. 97a (quoting complaint)).⁷ In response, the

⁷ Per the court of appeal, *id.* at 241-42 (Pet. App. 97a-98a):

The specific public health orders that Calvary Chapel had violated included, according to plaintiffs, the following orders: (1) the County's July 2, 2020 risk reduction order requiring all businesses to submit a social distancing protocol, requiring all persons to maintain a minimum distance of six feet from persons outside their household, requiring all persons within a business (including a church) to wear face coverings unless medically exempt, and imposing limitations on gatherings as subsequently directed by Dr. Cody; (2) Dr. Cody's gatherings directives, as revised from July 8, 2020, through September 8, 2020, that prohibited indoor gatherings that brought “together multiple people from separate households in a single space,” such as religious services, and required face coverings for outdoor gatherings unless medically exempt; (3) the State’s August 28, 2020 order implementing the “Blueprint for a Safer Economy,” a tiered system for modifying public health measures based on COVID-19 test and case rates, which placed the County in the most

trial court granted a temporary restraining order.⁸ *Id.* at 243 (Pet. App. 99a-100a). The court followed with a modified TRO and a preliminary injunction. *Id.* at 243-45 (Pet. App. 100a-103a). Respondents sought contempt sanctions against Calvary Chapel for violation of these three orders and obtained sanctions in excess of \$200,000. *Id.* at 245-48 (Pet. App. 103a-108a).

restrictive tier 1 (prohibiting indoor gatherings) prior to September 8, 2020, and then in the less restrictive tier II (imposing capacity limitations on gatherings of 25 percent capacity or 100 persons, whichever was fewer); (4) the County's October 5, 2020 revised risk reduction order, which applied to all activities and sectors and required submission of a social distancing protocol, wearing face coverings at all times (including inside churches), and maintaining six feet of social distance from persons outside one's household; and (5) Dr. Cody's October 13, 2020 revised gatherings directive, which allowed indoor gatherings with a capacity limitation of 25 percent or 100 persons, whichever was fewer, and continued to prohibit indoor singing.

8 Per the court of appeal, *id.* at 243 (Pet. App. 100a):

The temporary restraining order included in the November 2, 2020 order enjoined Calvary Chapel from “1. Conducting any gathering that does not fully comply with both the State and County public health orders, including but not limited to: holding gatherings indoors in excess of 100 people or 25% of capacity, whichever is less; holding outdoor gatherings in excess of 200 people; allowing participants to attend gatherings without wearing face coverings; allowing participants to attend gatherings without maintaining adequate social distance; and allowing singing at indoor gatherings; [¶] 2. Operating, whether indoors or outdoors, without the prior submission and implementation of a Social Distancing Protocol.”

On Calvary Chapel’s appeal, however, the state court of appeal held that “the underlying orders which Calvary Chapel violated are void and unenforceable, [so] we will annul the orders of contempt in their entirety and reverse the orders to pay monetary sanctions.” *Id.* at 241 (Pet. App. 96a). Pointing to this Court’s intervening church COVID cases, the court ruled that the TRO barring

any indoor gathering that did not comply with the capacity limitations of 100 people or 25 percent of capacity is unconstitutional because it discriminates against a religious institution in violation of the free exercise clause of the First Amendment and the County has not satisfied its burden to show that the underlying health order satisfies strict scrutiny.

Id. at 256 (Pet. App. 121a). The court of appeal held that it “need not determine whether the November 2, 2020 temporary restraining order is unconstitutional with respect to the health order’s restrictions on indoor singing and requirements for face coverings, social distancing, and submission of a social distancing protocol.” *Id.* at 256 (Pet. App. 121a-122a). As the court explained:

The trial court did not impose discrete fines for violations of the capacity limitations and the violations of the requirements for social distancing, face coverings, and submission of a social distancing protocol but instead imposed a single, aggregate punishment. We will therefore reverse . . .

Id. (Pet. App. 122a). The court reversed the contempt sanctions for the modified TRO and preliminary injunction under the same rationale. *Id.* at 262 (Pet. App. 132a-133a).

3. Administrative Fines, Enforcement Action, and Appeal

Meanwhile, in July 2021, respondent government entities and health official filed an amended complaint seeking injunctive relief and nearly \$3 million in fines for Calvary Chapel’s noncompliance with the COVID health orders. *CCSJ II*, 2025 Cal. App. Unpub. LEXIS 2244 at *15-*16 (Pet. App. 12a-13a). Respondents moved for summary adjudication on several of their claims, *id.* at *17 (Pet. App. 14a), and Calvary Chapel opposed the motion, *inter alia*, on the basis of the Free Exercise Clause of the First Amendment and the Excessive Fines Clause of the Eighth Amendment, *CCSJ II*, 2025 Cal. App. Unpub. LEXIS 2244 at *22-*23 (Pet. App. 18a-19a). On April 7, 2023 – *after* the court of appeal had reversed the prior injunctive orders and contempt sanctions – the superior court rejected Petitioners’ federal constitutional defenses and ruled for the state and county government, *id.* at *23 (Pet. App. 19a), imposing judgment against Calvary Chapel for over \$1.2 million in fines, *id.* at *29 (Pet. App. 23a).⁹

⁹ The superior court identified two categories of violation: first, failure to submit a “completed” Social Distancing Protocol (SDP) from Aug. 23 2020 through May 18, 2021; and second, failure to

Calvary Chapel appealed, renewing its objections to the fines under the Free Exercise and Excessive Fines Clauses. *CCSJ II*, 2025 Cal. App. Unpub. LEXIS 2244 at *29-*30 (Pet. App. 24a). This time, the California Court of Appeal affirmed. Despite the variety of exemptions to the COVID orders, *see supra* pp. 6-11, the court held that the restrictions were “of general applicability” under the test of *Employment Division v. Smith*, 494 U.S. 872 (1990). *See CCSJ II*, 2025 Cal. App. Unpub. LEXIS 2244 at *49-*52 (Pet. App. 39a-41a). Or more precisely, the court of appeal held that “Calvary Chapel has not shown” a lack of general applicability, *id.* at *52 (Pet. App. 41a), even though the existence of multiple exemptions was undisputed. As to the Excessive Fines issue, the court of appeal held that Calvary Chapel “intentionally and repeatedly failed to comply” with restrictions that conflicted with its

require face coverings for congregants and staff, in violation of the November 9, 2020 Notice of Violation (NOV) continuing through the rescission of the face mask requirement on June 21, 2021. Super. Ct. Sum. Adjud. at 3, 16-17, 31 (Pet. App. 52a, 71a, 92a-93a). The superior court declined to impose a fine for the SDP violations, finding them in part unconstitutional, and in part redundant of the face covering fines. *Id.* at 30 (Pet. App. 91a-92a). Moreover, regarding the “face covering fines,” the superior court relied exclusively upon the November 9, 2020 NOV. *E.g., id.* at 5, 8-9, 16-17, 31 (Pet. App. 55a, 59a, 71a, 92a-93a). Respondents did not cross-appeal the superior court’s rejection of the SDP fines or its disregard of any face mask NOV beyond that of November 9, 2020. Hence, the superior court’s judgment rested exclusively upon the accumulated fines, plus interest, for violation of the November 9, 2020 NOV. *Id.* at 31 (Pet. App. 92a-93a. *Accord CCSJ II*, 2025 Cal. App. Unpub. LEXIS 2244 at *2 (Pet. App. 1a). And that is the only violation before this Court.

religious beliefs and therefore the fines were “not grossly proportionate [sic] to Calvary Chapel’s culpability.” *Id.* at *59 (Pet. App. 47a). The court also perceived the severity of the COVID pandemic as supporting a “high” level of culpability. *Id.* at *59-*60 (Pet. App. 48a).

Calvary Chapel sought rehearing, which the court of appeal denied. Pet. App. D. The Supreme Court of California denied Calvary Chapel’s petition for discretionary review. Pet. App. E.

REASONS FOR GRANTING THE PETITION

The government respondents in this case violated the Constitution in multiple respects. This Court should grant review to clarify that restrictions on religious worship services trigger strict scrutiny, under the *Smith* test, where the restrictions are subject to secular exceptions; or, in the alternative, that the church autonomy doctrine shields not just the selection of ministerial personnel but also a religious body’s managing of its religious rituals. If *Smith* does not require strict scrutiny or autonomy for religious services, then this Court should overrule *Smith*.

This case also presents the question whether the Eighth Amendment bars as excessive the imposition of million-dollar fines for the refusal to submit to government dictation of the intimate details of religious services.

I. RESTRICTIONS ON RELIGIOUS CONDUCT WITH SECULAR EXCEPTIONS TRIGGER STRICT SCRUTINY UNDER *SMITH*.

In this case, the government respondents imposed restrictions on Calvary Chapel while allowing multiple exceptions for a variety of secular activities. *Supra* pp. 6-11. Under the *Smith* test, this should have triggered strict scrutiny. Yet the California Court of Appeal refused to apply strict scrutiny. Instead, the court below held that “Calvary Chapel has not shown that these secular activities were *comparable* to the church activities that subjected Calvary Chapel to fines for violating the face covering requirements.” *CCSJ II* at *49 (Pet. App. 39a) (emphasis added).

But as detailed at length above, the raft of secular exceptions were indeed comparable. *Supra* pp. 6-11. Moreover, the court below, in applying a demanding test for comparability, departed from this Court’s teachings.

The assessment of a restriction’s general applicability does not entail merely a comparison of the *activities* as such, but rather a comparison of the *risk* to the government interest (here, the spread of COVID):

[W]hether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue. [*Roman Catholic Diocese of Brooklyn*,] 141 S. Ct. [at] 67 (per curiam)

(describing secular activities treated more favorably than religious worship that either “have contributed to the spread of COVID-19” or “could” have presented similar risks). Comparability is concerned with the risks various activities pose, not the reasons why people gather. *Id.*, at ___, 141 S. Ct. 63, 79 (Gorsuch, J., concurring).

Tandon, 593 U.S. at 62. “A law . . . lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government’s asserted interests in a similar way.” *Fulton v. City of Philadelphia*, 593 U.S. 522, 534 (2021). That analysis suffices here to trigger strict scrutiny. *See supra* p.11. The COVID virus does not care whether the mask is off (1) for *medical* or *religious* reasons; (2) for *intense sports* or for *intense prayer*; (3) to *communicate* or to *worship*; (4) pursuant to government *discretion* or not; (5) to engage in *facial services* or *religious services*; (6) for a *meal* or a *religious ritual*; (7) for outdoor *work or recreation* or outdoor *religious services*; (8) in a *prison*, or in a *church*. For that matter, the virus does not care if the breathing person is age two or under. *But cf. supra* pp. 7, 10 (exempting those age two or younger from masking requirement).

In short, the California Court of Appeal badly distorted the *Smith* test for “general applicability,” to the detriment of religious freedom in the core area of freedom to worship. This Court should grant review.

II. THIS COURT SHOULD RECOGNIZE THE RIGHT OF RELIGIOUS BODIES TO DIRECT THEIR RELIGIOUS SERVICES AS PART OF THE CHURCH AUTONOMY DOCTRINE.

More fundamentally, this Court should hold that the church autonomy doctrine under the First Amendment Religion Clauses includes a right not to have government dictate the parameters of religious services. This Court has already recognized the right of religious bodies to select their own ministers. *Hosanna-Tabor Evangelical Lutheran Church v. EEOC*, 565 U.S. 171 (2012). The rationale for this *ministerial* exception to the *Smith* test applies with equal if not greater force to a *liturgical* exception to *Smith*. The lower courts were not free to recognize such an exception. This Court should grant review and do so.

Smith itself nodded to the essentiality of religious rituals to the free exercise of religion. 494 U.S. at 877-78 (“It would doubtless be unconstitutional, for example, . . . to prohibit bowing down before a golden calf”). And previously, this Court had recounted in *Buckley v. Valeo*, 424 U.S. 1 (1976) (*per curiam*):

Intolerable persecutions throughout history led to the Framers’ firm determination that *religious worship* -- both in *method* and belief -- must be *strictly protected from government intervention*.

Id. at 93 n.127 (emphasis added). *See also Lemon v. Kurtzman*, 403 U.S. 602, 623 (1971) (“the Constitution’s authors sought to protect religious worship from the pervasive power of government”).

In *Hosanna-Tabor*, this Court observed that the Puritans came to New England to “establish their own modes of worship” without interference from “the national church,” i.e., the authority of the regime. 565 U.S. at 182. And indeed the very spirit of the American Experiment and the Constitution renders anathema the notion of government refereeing the conduct of religious services, throwing penalty flags for mask or distancing violations – exactly the authority Respondents claim to possess.

The principles underlying the ministerial exception likewise apply to a liturgical exception. The conduct of worship and other religious services represents an “internal church decision that affects the faith and mission of the church itself.” *Hosanna-Tabor*, 565 U.S. at 190. *Accord Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020) (“This does not mean that religious institutions enjoy a general immunity from secular laws, but it does protect their *autonomy with respect to internal management decisions that are essential to the institution’s central mission*”) (emphasis added). Indeed, if anything qualifies as “essential to the institution’s central mission,” it is the conduct of worship itself. For most religious bodies, worship services constitute their *raison d’être*. While hiring decisions affect *how* a religious institution pursues its mission, liturgical decisions often represent that mission *itself*.

Recognizing a liturgical exception to *Smith* under the church autonomy doctrine would provide crucial freedom of religious bodies from government monitoring of religious rituals. To be sure, this would not be a *carte blanche* for criminal acts contrary to legitimate police power. Child sacrifice, for example, as homicide remains homicide, regardless of one's theology. But government micromanagement of such matters as health protocols would be constitutionally off the table, whether it be a ban on circumcisions, e.g., AP, "Iceland eyes banning most circumcisions" (Feb. 26, 2018), or masking and distancing requirements for churchgoers, as here. And with a liturgical exception, there would be no more second-guessing by courts as to what *really* matters in a worship service. *Compare* Super. Ct. Sum. Adjud. at 29 ("It should appear clear to all—regardless of religious affiliation—that wearing a mask while worshipping one's god and communing with other congregants is a simple, unobtrusive, giving way to protect others while still exercising your right to religious freedom.").

Importantly, the government can always seek to educate the public with its advice on healthier living and avoidance of risks. And congregants are free to attend or not attend a house of worship that observes (or not) such government advice, or to take personal measures as they see fit.¹⁰ But government dictation

¹⁰ The record below reflects Calvary Chapel's approach as relying upon congregants to make their own judgments about measures for marginal risk reduction. As the superior court noted, "Calvary contends masks were made available and there was ample space in the church to permit social distancing[:]"

of the rules for religious rituals is the hallmark of totalitarian governments,¹¹ not the United States of America.

III. IF *SMITH* AUTHORIZES GOVERNMENT BODIES TO REFEREE RELIGIOUS SERVICES, THIS COURT SHOULD OVERRULE *SMITH*.

As explained above, petitioner Calvary Chapel has at least two alternative routes under the Free Exercise Clause to relief from respondents' interference with its religious services. First, the exceptions to the COVID restrictions show a lack of general applicability, which takes this case out of *Smith* and into strict scrutiny. Second, in the alternative, this Court should recognize a doctrine of "liturgical exception" as it did in recognizing a "ministerial exception." Both clergy and liturgy rest at the heart of religious exercise and should receive maximum protection under the Free Exercise Clause.

Should this Court conclude, however, that *Smith* neither countenances strict scrutiny here nor allows

there is no dispute that at least during each of these services, baptisms and prayer meetings, attendees were not required to wear face coverings or to socially distance, and that none of these activities was held outside." Super. Ct. Sum. Adjud. at 5 (Pet. App. 54a-55a).

¹¹ See, e.g., Tom Phillips, "China's crusade to remove crosses from churches 'is for safety concerns,'" *The Guardian* (July 29, 2015) ("crosses have been stripped from the roofs of more than 1,200 Chinese churches . . . 'for the sake of safety and beauty,' a government official has claimed"); Jonah McKeown, "China's new 'Smart Religion' app requires faithful to register to attend worship services," *EWTN UK* (Mar. 7, 2023).

for a liturgical exception, then *Smith* would stand for the proposition that government can, in the name of “health,” prescribe the details of religious services. If that is so, then *Smith* is fundamentally incompatible with religious freedom and should be overruled.

Members of this Court have regularly criticized *Smith*. *City of Boerne v. Flores*, 521 U.S. 507, 565 (1997) (O’Connor, J., joined by Blackmun, J., dissenting) (“I remain of the view that *Smith* was wrongly decided . . . If the Court were to correct the misinterpretation of the Free Exercise Clause set forth in *Smith*, it would . . . put our First Amendment jurisprudence back on course . . .”); *Fulton v. City of Philadelphia*, 593 U.S. 522, 545 (2021) (Alito, J., joined by Thomas and Gorsuch, JJ., concurring) (“*Smith* . . . is ripe for reexamination.”); *id.* at 543 (Barrett, J., joined by Kavanaugh, J., concurring) (“In my view, the textual and structural arguments against *Smith* are more compelling. As a matter of text and structure, it is difficult to see why the Free Exercise Clause — lone among the First Amendment freedoms — offers nothing more than protection from discrimination.”).

Scholars, too, have hammered *Smith*. Douglas Laycock & Steven T. Collis, *Generally Applicable Law and the Free Exercise of Religion*, 95 Neb. L. Rev. 1 (2016); Christopher C. Lund, *A Matter of Constitutional Luck: The General Applicability Requirement in Free Exercise Jurisprudence*, 26 Harv. J.L. & Pub. Pol’y 627, 629 (2003); Michael W. McConnell, *Free Exercise Revisionism and the Smith Decision*, 57 U. Chi. L. Rev. 1109, 1115 (1990); Douglas Laycock, *The Supreme Court’s Assault on Free Exercise, and the Amicus Brief That Was Never*

Filed, 8 J.L. & Relig. 99, 102 (1990). These scholars have documented *Smith's* errors and demonstrated its inconsistency with the text, history, and structure of the First Amendment.

State courts have likewise eschewed *Smith's* approach when construing their respective state constitutions, which elucidate the meaning of our Constitution. *E.g.*, *Att'y Gen. v. Desilets*, 636 N.E.2d 233, 235-36 (Mass. 1994); *State v. Mack*, 249 A.3d 423, 441 (N.H. 2020). *See also* Nathan Moelker, *Fulton's Answer: State Constitutional Rejections Of Employment Division v. Smith As A Practical Model For The Restoration Of The Free Exercise Clause*, 18 Liberty U. L. Rev. 191 (2023) (collecting cases).

This case powerfully illustrates the ongoing damage *Smith* inflicts on religious freedom. Here, government officials imposed over a million dollars in fines on a church for conducting worship services according to the *church's* religious beliefs rather than *government* diktat. The church faces massive financial punishment, not for harming anyone, but for refusing to allow bureaucrats to superintend its liturgy — as Respondents have done. Over the course of the pandemic, Respondents dictated how many congregants may attend a service, whether they must wear masks, whether they can sing, and how far apart they must stand. *Smith* forces religious believers into submission to government micromanagement of liturgical matters, with their only defense being a discrimination claim where the government's ukase contains some secular exemptions.

As the COVID pandemic demonstrated, *Smith's* framework leaves religious practice uniquely vulnerable during times of crisis when government

power expands most dramatically. While this Court intervened in several cases to prevent the worst abuses, the underlying *Smith* framework limited the terms of such interventions and left countless other religious communities without recourse.

The *Smith* decision has caused trouble enough. It is time for this Court either to modify or discard it.

IV. FINING A HOUSE OF WORSHIP \$1.2 MILLION FOR CONDUCTING RELIGIOUS SERVICES THAT PRIORITIZE TENETS OF FAITH OVER DRACONIAN GOVERNMENT COVID PROTOCOLS VIOLATES THE EXCESSIVE FINES CLAUSE OF THE EIGHTH AMENDMENT.

This Court's Excessive Fines cases are few in number and largely undeveloped. Indeed, it seems it was not until 1998 that this Court first struck down a fine as excessive. *United States v. Bajakajian*, 524 U.S. 321, 344 (1998) (Kennedy, J., dissenting) ("For the first time in its history, the Court strikes down a fine as excessive under the Eighth Amendment"). The need for guidance for lower courts applying the Excessive Fines Clause therefore provides an additional reason to grant review.

The penalties the government imposed on Calvary Chapel violate the Eighth Amendment's Excessive Fines Clause as being "grossly disproportionate" to the alleged offenses in question.

The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const., amend. VIII. "The purpose of the Eighth

Amendment . . . was to limit the government's power to punish.” *Austin v. United States*, 509 U.S. 602, 609 (1993) (citation omitted). As this Court said in *Timbs v. Indiana*, 586 U.S. 146, 149-50 (2019):

Like the Eighth Amendment’s proscriptions of “cruel and unusual punishment” and “[e]xcessive bail,” the protection against excessive fines guards against abuses of government’s punitive or criminal-law-enforcement authority. This safeguard, we hold, is “fundamental to our scheme of ordered liberty,” with “dee[p] root[s] in [our] history and tradition.”

This protection exists “[f]or good reason,” *id.* at 153: “Exorbitant tolls undermine other constitutional liberties. Excessive fines can be used, for example, to retaliate against or chill the speech of political enemies.” *Id.* Here, Calvary Chapel chose not to “get with the program” when that program entailed acting inconsistently with its religious beliefs. While standing up for one’s beliefs may come with a price, under the Excessive Fines Clause that price may not be a disproportionately crushing fine.¹²

“The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality,” *United States v. Bajakajian*, 524 U.S. 321, 334 (1998). Hence, “[i]f the amount of the [penalty] is grossly disproportional to the gravity of

¹² By contrast, the fine imposed in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), for failure to get vaccinated against smallpox, was five dollars (2025 equivalent of \$184.08, according to the CPI Inflation Calculator).

the defendant's offense, it is unconstitutional." *Id.* at 337.

Here, Calvary Chapel stood up resolutely for its religious beliefs. As the church phrased it in its briefing below,

while Calvary Church did continue to operate in violation of the ordinances, it was not out of ill will, but because it believed, and still believes, it has a constitutional right to meet in person, gather in groups larger than 25 people, sing, perform communion, and worship without masks.

Appellants' Reply Br. at 20 (Cal. Ct. App. Dec. 6, 2024). And as it turns out, subsequent history has, to a great extent, vindicated the church: in *CCSJI*, the California Court of Appeal voided the initial injunctions and contempt orders imposed on the church. Meanwhile, this Court repeatedly overturned similar restrictions imposed on other churches, *see supra* p. 12. The county, however, brooking no departure from its prescribed COVID regimen, levied well over a million dollars in fines on Calvary Chapel. That response was "grossly disproportional."

To determine whether a fine is constitutionally excessive, this Court has looked to such considerations as the culpability of the defendant and harm to the government's interests. *Bajakajian*, 524 U.S. at 338-39. Both considerations weigh in favor of Calvary Chapel.

A. Culpability was minimal

As in *Bajakajian*, the defendants had “a minimal level of culpability.” *Id.* at 339. The underlying conduct involved the exercise of fundamental constitutional rights: holding religious services while declining to enforce masking and distancing requirements (and restrictions on singing) that conflicted with the church’s understanding of its religious obligations. As discussed above, while the church violated county orders, it did so based on a good-faith assertion of its religious liberty. Despite that conclusion, the Court of Appeal determined that “the undisputed facts show that Calvary Chapel’s level of culpability due to violating the public health orders requiring face coverings is high, and therefore the fines in the amount of \$1,228,700 do not violate the excessive fines clause,” *CCSJ II*, 2025 Cal. App. Unpub. LEXIS 2244, at *60 (Pet. App. 48a). This presents a unique and troubling scenario: punishing conduct as highly culpable when that conduct consisted of refusing to comply with orders that (1) conflicted with religious beliefs and (2) overlapped heavily with prior restrictions which had been invalidated.

The Court of Appeal in *CCSJ I* -- the contempt case -- refused to parse out which specific violations were tied to unconstitutional provisions versus possibly constitutional ones. Instead, the court held that “the trial court did not impose discrete fines for violations of the capacity limitations and the violations of the requirements for social distancing, face coverings, and submission of a social distancing protocol but instead imposed a single, aggregate

punishment. We will therefore reverse . . .” *CCSJ I*, 82 Cal. App. 5th at 256 (Pet. App. 122a). The same aggregation problem exists here. The \$1.2 million in fines stem from a course of conduct — holding religious services in a manner that did not fully comply with county orders — that was substantially intertwined with restrictions subsequently declared void.¹³ The capacity limitations were void. The prohibition on singing was part of orders declared void. And the masking requirements were enforced as part of the same overall regulatory scheme. Culpability for noncompliance with a scheme that is at least partially and arguably completely unconstitutional cannot be “high.”

B. Harm was minimal

The harm to the government “was also minimal.” *Bajakajian*, 524 U.S. at 339. As noted earlier, *supra* pp. 6-11, the county restrictions allowed exemptions for a host of activities that, so far as the COVID virus was concerned, were just as open to viral transmission as the activities Calvary Chapel undertook. Any marginal harm to efforts to stem COVID spread would be both minimal and, indeed,

¹³ Indeed, the November 9, 2020 NOV – the basis of the fines here, *see supra* note 9 -- *expressly* required Calvary Chapel, *inter alia*, to comply with the TRO of November 2, 2020. *See* Nov. 9, 2020 NOV at 3 (“You must immediately comply with the Public Health Orders and the November 2 TRO”). Yet the court of appeal subsequently held that same TRO to be unconstitutional and “void.” *CCSJ I* at 243, 255-56, 258 (Pet. App. 99a-100a, 120-122a, 125a-126a).

incalculable. The County admitted as much.¹⁴ Stamping out the possibility of some incremental harm is not a constitutional justification for hammering a house of worship with a multi-million dollar fine.

* * *

Standing up for one's beliefs against government prescriptions has a long and venerable tradition in this country, a tradition running through such iconic figures as the children in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943) (refusing to pledge allegiance), and the automobile owners in *Wooley v. Maynard*, 430 U.S. 705 (1977) (refusing to display "Live Free or Die" motto on license plate). Government *overreactions* to such principled noncompliance, by contrast, constitute shameful episodes in our history. *E.g.*, "The Civil Rights Act of 1964: A Long Struggle for Freedom," Library of Congress, (video of forceful responses to civil rights protesters in Birmingham in 1963).¹⁵

The Excessive Fines Clause "guards against abuses of government's punitive or criminal-law-enforcement authority." *Timbs*, 586 U.S. at 149. The County violated that constitutional provision in this case. This Court should grant review to clarify for the

¹⁴ As noted in Calvary Chapel's brief in the Court of Appeal, Appellants' Opening Brief at 35 (Aug. 5, 2024), "Dr. Sarah Rudman testified on behalf of the County that it was difficult, if not impossible, to determine the source of COVID-19 transmission, including at Calvary's services. (5CT 1431:2-15.)"
¹⁵ <https://www.loc.gov/exhibits/civil-rights-act/multimedia/birmingham-protests.html>

lower courts that the Excessive Fines Clause applies to government overreach in its efforts to exact total obedience to health protocols against assertions of constitutional rights, especially protocols of at best marginal utility.

CONCLUSION

This Court should grant the petition for certiorari.

Respectfully submitted,

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