

1 Robert H. Tyler, Esq., [REDACTED]
2 Nada N. Higuera, Esq., [REDACTED]
3 TYLER & BURSCH, LLP

4 [REDACTED]

5 Dean R. Broyles, Esq., [REDACTED]
6 NATIONAL CENTER FOR LAW & POLICY

7 [REDACTED]
8 [REDACTED]

9 Edward L. White III, admitted PHV
10 Erik Michael Zimmerman, admitted PHV
11 AMERICAN CENTER FOR LAW AND JUSTICE

12 [REDACTED]
13 [REDACTED]

14 *Counsel for Plaintiffs [Additional counsel listed on signature page]*

15 **UNITED STATES DISTRICT COURT**
16 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
17 **REDDING OFFICE**

18 **CALVARY CHAPEL OF UKIAH**, a California Non-
19 Profit Corporation; **CALVARY CHAPEL FORT**
20 **BRAGG**, a California Non-Profit Corporation; and **RIVER**
21 **OF LIFE CHURCH**, a California Non-Profit Corporation,
22 Plaintiffs,

23 vs.

24 **GAVIN NEWSOM**, in his official capacity as Governor
25 of California; **SANDRA SHEWRY, MPH, MSW**, in her
26 official capacity as California Public Health Officer;
27 **NOEMI DOOHAN, M.D.**, in her official capacity as
28 Public Health Officer, Mendocino County; and **NGOC-**
PHUONG LUU, M.D., in her official capacity as Butte
County Public Health Officer,

Defendants.

Case No. 2:20-cv-01431-KJM-DMC

**PLAINTIFFS' SUR-REPLY IN
SUPPORT OF THEIR MOTION FOR
PRELIMINARY INJUNCTION**

Hearing Date: November 6, 2020
Time: 10:00 a.m.
Courtroom: 3
Judge: Hon. Kimberly J. Mueller
Action Filed: July 15, 2020

1 Plaintiffs' response to Defendants' Supplemental Citation (Dkt. #54) is submitted pursuant to the
2 Court's direction at Docket #55. The State Defendants' suggestion at the hearing on Plaintiffs' motion
3 for a preliminary injunction that CDC guidance, including a document concerning holiday gatherings,
4 actually supports banning all singing and chanting at all indoor worship services is simply not true.

5 Three key points of the CDC publications submitted by the parties can be summarized as follows:

6 #1. Since COVID-19 spreads mainly between people who are in close contact with one another,
7 wearing masks, physical distancing, limiting attendance, and good ventilation are highly effective
8 means of limiting the spread of COVID-19 at indoor events.

9 #2. In only a few *limited* circumstances, *e.g.*, crowded indoor holiday parties (Dkt. #54), does the
10 CDC actually recommend that singing or chanting be avoided.

11 #3. The CDC *does not* recommend that singing or chanting be eliminated *at indoor worship*
12 *services*, or otherwise suggest that a ban on all singing and chanting at such services is necessary
13 or advisable.¹

14 Defendants' supplemental exhibit relates solely to *point #2*; it provides guidance for individuals
15 who will be hosting Día de los Muertos or other "fall and winter holiday celebrations" that "typically
16 include large gatherings of families and friends" and "crowded parties."² This exhibit does not address
17 worship services or otherwise *refute point #3*. To the contrary, the document includes links to other CDC
18 publications that *confirm* singing and chanting can safely occur at *indoor worship services*.

19 For instance, the second paragraph of Defendants' exhibit states: "In-person gatherings pose
20 varying levels of risk. Event organizers and attendees should consider the risk of virus spread based on
21 event size and use of mitigation strategies, as outlined in the [Considerations for Events and Gatherings](#)."
22 Dkt. #54, Exh. A at 1. The "Considerations for Events and Gatherings" document that Defendants'
23 exhibit advises readers to review includes a variety of recommendations on how to hold safe gatherings,
24 but *it does not recommend banning all singing, chanting, or shouting at all indoor events*. Pls.' Exh. 27.

25 ¹ See, *e.g.*, Pls.' Exh. 2 at 2; Pls.' Exh. 3; Pls.' Exh. 4 at 1; Pls.' Exh. 7; Watt Exh. 17 at 1-2; Watt Exh.
26 20 at 1-2; Watt Exh. 21 at 1-2; *see also* Bhattacharya Decl. (Dkt. #47), ¶ 18 ("Plaintiffs can safely hold
27 indoor worship services that include singing and chanting by following CDC guidelines.").

28 ² Dkt. #54, Exh. A at 2. The publication states that a "large indoor [Día de los Muertos] celebration[]
with singing or chanting" poses a high risk, *id.* at 7 (emphasis added), and also recommends "[a]void[ing]
singing, chanting, or shouting" at holiday parties and gatherings "especially when not wearing a mask
and within 6 feet of others." *Id.* at 4.

1 To the contrary, under the heading “Promoting Healthy Behaviors that Reduce Spread,” this CDC
2 publication states: “Masks are strongly encouraged in settings where individuals might raise their voice
3 (*e.g.*, shouting, chanting, singing).” *Id.* at 2. Similarly, one of the links on the Holiday Gatherings
4 webpage that Defendants rely upon is to CDC guidance for [Personal and Social Activities](#), which states
5 that, for events or gatherings, “[m]asks are strongly encouraged in settings where individuals might raise
6 their voices, such as shouting, chanting, or singing.” Pls.’ Exh. 28 at 3-4. These two CDC publications—
7 which were both updated on October 29, 2020, ten days *after* the most recent update for Defendants’
8 exhibit—are further proof that the wearing of masks, especially when coupled with distancing and
9 attendance limits, can mitigate risks posed by shouting, chanting, or singing at indoor events.

10 Additionally, CDC guidance for music, choir, and performing arts teachers in K-12 schools
11 provides a variety of recommendations on how singing, and the playing of wind and brass instruments,
12 can occur safely; the CDC did *not* recommend a blanket ban on all such activities. Pls.’ Exh. 29.³

13 Furthermore, the CDC’s [Funeral Guidance for Individuals and Families](#), last updated on
14 November 2, 2020, does *not* recommend banning all singing or chanting at funeral services and
15 visitations (including those held inside places of worship). Pls.’ Exh. 30. Rather, the CDC states:

16 Consider limiting the number of people engaged in activities that produce respiratory droplets,
17 which may contain virus, (*e.g.*, singing or chanting) especially when participants are indoors and
18 in close proximity to each other. *If attendees choose to sing or chant, encourage them to wear
masks and increase distance between people to greater than 6 feet.*⁴

19 Finally, the CDC’s [Considerations for Communities of Faith](#) (last updated October 29, 2020), is
20 far more relevant to the present case than Defendants’ holiday party document. The “Considerations for
21 Communities of Faith” begins with the following statement (at Pls.’ Exh. 31, page 1):

22 CDC offers the following general considerations to help communities of faith discern how best
23 to practice their beliefs while keeping their staff and congregations safe. Millions of Americans
24 embrace worship as an essential part of life. For many faith traditions, gathering together for
25 worship is at the heart of what it means to be a community of faith. But as Americans are now
26 aware, gatherings present a risk for increasing spread of COVID-19 during this Public Health
Emergency. CDC offers these suggestions for faith communities to consider and accept, reject,

27 ³ This guidance was included within a larger document that was last updated on October 21, 2020.
<https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-staff.html>.

28 ⁴ *Id.* at 3-4 (emphasis added).

1 or modify, consistent with their own faith traditions, in the course of preparing to reconvene for
2 in-person gatherings while still working to prevent the spread of COVID-19.

3 This guidance is not intended to infringe on rights protected by the First Amendment to the U.S.
4 Constitution or any other federal law, including the Religious Freedom Restoration Act of 1993
5 (RFRA). The federal government may not prescribe standards for interactions of faith
6 communities in houses of worship, and in accordance with the First Amendment, no faith
7 community should be asked to adopt any mitigation strategies that are more stringent than the
8 mitigation strategies asked of similarly situated entities or activities.

9 In addition, we note that while many types of gatherings are important for civic and economic
10 well-being, religious worship has particularly profound significance to communities and
11 individuals, including as a right protected by the First Amendment. State and local authorities are
12 reminded to take this vital right into account when establishing their own re-opening plans.

13 The “Considerations for Communities of Faith” includes recommendations on how to ensure that
14 worship services are safe, such as encouraging the use of masks, cleaning, ventilation, social distancing,
15 limiting the number of attendees, and limiting physical contact. Pls.’ Exh. 31. The CDC did not suggest
16 that singing and chanting should be banned at indoor services; to the contrary, *the CDC assumed that*
17 *such activities would continue* and recommended specific ways that they can occur safely:

18 Consistent with the community’s faith tradition, consider temporarily limiting the sharing of
19 frequently touched objects, such as worship aids, prayer rugs, prayer books, *hymnals*, religious
20 texts and other bulletins, books, or other items passed or shared among congregants, and
21 encouraging congregants to bring their own such items, if possible, or photocopying or projecting
22 prayers, *songs*, and texts using electronic means.

23 *Id.* at 2 (emphasis added).

24 Dr. Bhattacharya reviewed and discussed the CDC’s “Considerations for Communities of Faith”
25 guidance in his declaration (*see, e.g.*, Dkt. #47, ¶¶ 16-17) and concluded that, “[c]onsistent with this
26 guidance, *indoor singing during worship may occur with relative safety at Plaintiffs’ churches* if
27 precautionary measures including, but not limited to, social distancing and mask wearing are observed.”
28 *Id.*, ¶ 16 (emphasis added). Further, as Dr. Bhattacharya notes, Defendants do not actually suggest that
the CDC is incorrect; the State simply assumes that churches will not follow CDC recommendations:

I have carefully read the expert testimony of Dr. George Rutherford and Dr. James Watt. . . . They
both accurately describe the scientific evidence regarding the risk posed in COVID-19 disease
spread by public gatherings *where few precautions are taken* (such as mask wearing or social
distancing). However, none of the evidence that they present addresses *the situation in the present*
case, where the Plaintiffs are not contesting the implementation of appropriate precautions

1 *recommended by the Centers for Disease Control (CDC) for church gatherings. My expert*
2 *opinion, based on my review of the CDC guidelines and the case studies cited by the Defendants'*
3 *experts, is that a church that follows the CDC guidelines should be able to hold in-person worship*
4 *services that include singing or chanting without a substantial increase in the risk of COVID-19*
5 *risk relative to other similar activities that provide the same benefit.*

6 *Id.*, ¶ 14 (emphasis added).

7 In sum, as noted herein and in Plaintiffs' reply brief, CDC publications affirm the vital importance
8 of worship services that include singing and chanting, and confirm that such activities can occur safely
9 at indoor worship services if simple precautions are taken. Defendants' exhibit, which relates solely to
10 holiday parties and gatherings, does not undermine these facts. Plaintiffs' motion should be granted.

11 Respectfully submitted on November 9, 2020.

12 Robert H. Tyler, Esq., [REDACTED]
13 Nada N. Higuera, Esq., [REDACTED]
14 TYLER & BURSCH, LLP
15 [REDACTED]

16 Dean R. Broyles, Esq., [REDACTED]
17 NATIONAL CENTER FOR LAW & POLICY
18 [REDACTED]

19 /s Erik Michael Zimmerman
20 Edward L. White III, admitted PHV
21 Erik Michael Zimmerman, admitted PHV
22 AMERICAN CENTER FOR LAW AND JUSTICE
23 [REDACTED]

24 Abigail A. Southerland, admitted PHV
25 AMERICAN CENTER FOR LAW AND JUSTICE
26 [REDACTED]

27 *Attorneys for Plaintiffs*
28