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20  
21 **UNITED STATES DISTRICT COURT**  
22 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

23 **CALVARY CHAPEL OF UKIAH**, a  
24 California Non-Profit Corporation;  
25 **CALVARY CHAPEL FORT BRAGG**, a  
26 California Non-Profit Corporation; and  
27 **RIVER OF LIFE CHURCH**, a California  
Non-Profit Corporation,

28 Plaintiffs,

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

**PLAINTIFFS CALVARY CHAPEL OF  
UKIAH AND CALVARY CHAPEL  
FORT BRAGG'S MOTION FOR A  
PRELIMINARY INJUNCTION;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

1 vs.

Date: August 21, 2020

2 Time: 10:00 a.m.

3 Crtrm: 3, 15<sup>th</sup> Floor

4 **GAVIN NEWSOM**, in his official capacity as  
5 Governor of California; **SONIA ANGELL,**  
6 **M.D.**, in her official capacity as California  
7 Public Health Officer; **NOEMI DOOHAM,**  
8 **M.D.**, in her official capacity as Public Health  
9 Officer, Mendocino County; and **NGOC-**  
10 **PHUONG LUU, M.D.**, in her official capacity  
11 as Butte County Public Health Officer,

12 Defendants.

13 **TO THE COURT, ALL PARTIES, AND THEIR RESPECTIVE ATTORNEYS OF**  
14 **RECORD:**

15 PLEASE TAKE NOTICE that Plaintiffs Calvary Chapel of Ukiah and Calvary Chapel  
16 Fort Bragg (collectively herein “Plaintiffs”) move this Honorable Court for a preliminary  
17 injunction to enjoin Defendants Gavin Newsom, in his official capacity as Governor of  
18 California; Sonia Angell, MD., in her official capacity as California Public Health Officer; and  
19 Noemi Dooham, M.D., in her official capacity as Public Health Officer, Mendocino County  
20 (collectively herein “Defendants”), along with their officers, agents, servants, employees,  
21 attorneys, and other persons who are in active concert or participation with them, from directly  
22 or indirectly taking any action to prohibit singing or chanting in Plaintiffs’ places of worship  
23 through enforcement of the “Worship Ban,” which is the subject of this action.<sup>1</sup>

24 Plaintiffs make this application pursuant to the Federal Rule of Civil Procedure 65(a) and  
25 Civil Local Rules 230 and 231 based on the following:

- 26 1. Plaintiffs demonstrate a strong likelihood of success on the merits that the Worship  
27 Ban violates their constitutional rights under the First and Fourteenth Amendments.

28 <sup>1</sup> Butte County churches were closed by government order after the filing of the Verified Complaint. Plaintiff River of Life Church is located in Butte County and does not seek injunctive relief from the Worship Ban at this time but still seeks the other relief asserted in the Verified Complaint, including a declaratory judgment and nominal damages for violation of its constitutional rights.



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1                   **MEMORANDUM IN SUPPORT OF PLAINTIFFS’ MOTION**  
2                                   **FOR A PRELIMINARY INJUNCTION**

3   **INTRODUCTION**

4           Defendants have ordered under criminal penalty what would previously have been  
5 unthinkable in a free nation like the United States—the prohibition of singing or chanting in  
6 places of worship in the State of California and, in particular, in Mendocino County where  
7 Plaintiffs Calvary Chapel of Ukiah and Calvary Chapel Fort Bragg are located. This ban on  
8 signing or chanting is not applicable in any other indoor or outdoor contexts; it only applies to  
9 singing and chanting in a place of worship. While Plaintiffs appreciate the significant efforts  
10 Defendants have made to protect the health and safety of their community, Plaintiffs also  
11 recognize that a virus does not suspend their constitutional rights. Even in the midst of a  
12 pandemic, Defendants do not have the authority to criminalize singing and chanting in places of  
13 worship or so constrictively dictate the mode and manner of religious worship, especially where  
14 similar restrictions are not placed on secular activities, and other less restrictive means are  
15 available.

16           If the government decides to regulate First Amendment protected activities—as the ban  
17 on singing and chanting in places of worship clearly does—in pursuing even a compelling state  
18 interest, the government must narrowly tailor its restrictions. This is precisely what Defendants  
19 have not done. Therefore, Plaintiffs respectfully request that this Court, in the interest of justice  
20 and as a guardian of civil rights, grant a preliminary injunction so that Plaintiffs can freely sing  
21 and chant in their churches without fear of being penalized or arrested while simultaneously  
22 protecting their churches and the community from COVID-19 by carefully following CDC  
23 social distancing guidelines. No bond should be required of Plaintiffs.

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**FACTS**

**A. The Worship Ban**

On or about March 4, 2020, Defendant Newsom declared a State Emergency because of the threat of COVID-19.<sup>2</sup> Doc. 1, Verified Complaint, ¶ 15. Shortly thereafter, on or about March 19, 2020, Newsom issued Executive Order N-33-20, which prohibited all in-person worship services in California for an indefinite period until the threat of the pandemic subsided as determined exclusively by Newsom. Doc. 1 ¶ 16 & Ex. B. Places of worship remained closed until on or around May 25, 2020, when Newsom announced their re-opening and the California Department of Public Health issued initial guidance for places of worship to support a safe, clean environment for staff and congregants. Doc. 1. ¶ 17.

On or about July 1, 2020, the California Department of Public Health updated its Worship Guidance to include the Worship Ban, at issue here. Specifically, the Worship Ban mandates that places of worship “must therefore discontinue singing and chanting.” Doc. 1. ¶ 18 & Ex. A. At the time Defendants announced the new Worship Ban, all dine-in restaurants/bars/wineries, casinos, family entertainment centers, day camps, hotels, shopping malls, childcare centers, schools, or music, tv and film production remained open. No indoor establishment, except for places of worship, was subject to the ban on singing or chanting.<sup>3</sup> Doc. 1 ¶ 25.

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<sup>2</sup> As of the date of this filing, the Proclamation of a State of Emergency may be found online at the following URL: <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>.

<sup>3</sup> As of the date of this filing, the California guidance for each listed category, respectively, may be assessed online at the following URL's:

Restaurants/bars/wineries: <https://files.covid19.ca.gov/pdf/guidance-restaurants-bars.pdf>

Casinos: <https://files.covid19.ca.gov/pdf/guidance-casinos.pdf>

Family entertainment centers: <https://files.covid19.ca.gov/pdf/guidance-family-entertainment.pdf>

Day camps: <https://files.covid19.ca.gov/pdf/guidance-daycamps.pdf>

Hotels: <https://files.covid19.ca.gov/pf/guidance-hotels.pdf>

Shopping malls: <https://files.covid19.ca.gov/pdf/guidance-shopping-centers.pdf>

Childcare centers: <https://files.covid19.ca.gov/pdf/guidance-childcare--en.pdf>

Schools: <https://files.covid19.ca.gov/pdf/guidance-schools.pdf>

Music, tv and film production: per <https://covid19.ca.gov/industry-guidance/#top>, music, tv and film production is only subject to “Office and Workspace” guidelines: <https://files.covid19.ca.gov/pdf/guidance-office-workspaces.pdf>.

1 On or about July 11, 2020, a spokeswoman for California’s Office of Emergency  
2 Services, Ali Bay, confirmed that the Worship Ban “must be followed,” reiterating that it “has  
3 the same authority as all of California Department of Public Health’s other guidance, directives,  
4 and orders, which the governor has ordered residents to heed.”<sup>4</sup> Doc. 1 ¶ 19.

5 Just two days later, on or about July 13, 2020, Governor Newsom issued yet another order  
6 governing indoor operations.<sup>5</sup> Doc. 1 ¶ 20 & Ex. C. Under this most recent order, worship  
7 services, together with protests, fitness centers, malls, offices for non-essential actors and  
8 personal care services, as well as day camps, hotels, childcare centers, schools, or music, tv and  
9 film production are permitted to remain open in Mendocino County where Plaintiffs are located.  
10 *Singing and chanting, however, are only banned inside places of worship.* Doc. 1 ¶¶ 20, 26.  
11 *Singing and chanting are permissible activities in all other indoor activities permitted to remain*  
12 *open, including at indoor protests.* Doc. 1 Exs. A & C.

13 The Mendocino County Department of Public Health has incorporated the Worship Ban  
14 and has directed all residents to abide by the State orders and guidance. Doc. 1 ¶¶ 22-23 & Ex.  
15 D, p. 14. Failure to comply is a misdemeanor punishable by fine, imprisonment, or both. Doc. 1  
16 Ex. D, p. 1.

17 **B. Government Officials Support Protests While Severely Restricting Religious**  
18 **Exercise**

19 Despite the ongoing and even increasing restrictions on the protected First Amendment  
20 rights to freely assemble and engage in religious exercise as it relates to places of worship,  
21 Newsom has been unwavering in his support of massive protests in California. On or about May  
22 30, 2020, Newsom tweeted that “millions of people are lifting their voices in anger—rightfully  
23 outraged at the systemic racism that persists in America.” Doc. 1 ¶ 28 & Ex. E. On or about May  
24 30, 2020, Newsom also issued a written statement explaining the following: “I want to thank all  
25 those who helped protect human life last night and today – from community members who

26 <sup>4</sup> Don Thompson, *Church Singing Ban Strikes Sour Note With California Pastor* (July 11, 2020, 2:44 PM),  
27 <https://www.nbcbayarea.com/news/california/church-singing-ban-strikes-sour-note-with-california-pastor/2324470/>.

28 <sup>5</sup> As of the date of this filing, Governor Newsom’s July 13, 2020 order may also be found online at the  
following URL: <https://covid19.ca.gov/roadmap-counties/>.

1 exercised their right to protest peacefully and encouraged others to do the same, to the law  
2 enforcement officers who faced what were, at times, challenging conditions.” Doc. 1 ¶ 29 & Ex.  
3 F.

4 On or about June 1, 2020, Newsom stated the following during a press conference: “For  
5 those of you out there protesting, I want you to know that you matter. To those who want to  
6 express themselves... God bless you. Keep doing it. Your rage is real.”<sup>6</sup> Doc. 1 ¶ 30. On or  
7 about June 5, 2020, Newsom tweeted that “protestors have the right to protest peacefully”  
8 showing further support of mass protests. Doc. 1 ¶ 31 & Ex. E. On or about June 19, 2020,  
9 Newsom again promoted large gatherings of hundreds of people, retweeting pictures of a crowd  
10 gathered to paint Black Lives Matter street art. Doc. 1 ¶ 32 & Ex. E.

11 On or about June 26, 2020, at a news conference, Dr. Angell admitted that people who  
12 attended protests have been affected by COVID: “We don’t have exact numbers, but we do  
13 know from speaking to our counties that it is a contributor. Of course, it is difficult to tease out  
14 exactly because at the same time, the people were going out for these protests, we were also  
15 seeing increased movement for other reasons.” Yet she did not condone or ban chanting at mass  
16 protests.<sup>7</sup> Doc. 1 ¶ 34 & Ex. E. Even after implementation of the Worship Ban, on or about July  
17 2, 2020, when asked to explain whether protestors should heed Newsom’s mandate and avoid  
18 large crowds and gatherings, Newsom refused to condemn the protests and, instead, stated, “we  
19 have a Constitution, we have a right to free speech . . . we are all dealing with a moment in our  
20 nation’s history that is profound and pronounced . . . Do what you think is best. . .”<sup>8</sup> Doc. 1 ¶ 33.

### 21 **C. Plaintiffs’ Religious Beliefs and Practices**

22 Plaintiffs are evangelical Christian churches committed to the teachings of the Bible.  
23 Doc. 1 ¶ 35 & ECF pp.18-19. Plaintiffs believe the Bible is God’s Word to all people. It is  
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25 <sup>6</sup> Hannah Wiley, “*Your rage is real,*” *Gavin Newsom Tells California Protesters* (July 1, 2020, 2:55 PM),  
<https://www.sacbee.com/news/politics-government/capitol-alert/article243173056.html>.

26 <sup>7</sup> Cheri Mossburg, *Recent protests have contributed to California's coronavirus case increase, state official*  
*says* (June 26, 2020, , 4:48 PM), [https://edition.cnn.com/world/live-news/coronavirus-pandemic-06-26-20-](https://edition.cnn.com/world/live-news/coronavirus-pandemic-06-26-20-intl/h_b3a9aa753b4c05ea71479065f58bf534)  
27 [intl/h\\_b3a9aa753b4c05ea71479065f58bf534](https://edition.cnn.com/world/live-news/coronavirus-pandemic-06-26-20-intl/h_b3a9aa753b4c05ea71479065f58bf534).

28 <sup>8</sup> Eric Ting, *Gavin Newsom asked to reconcile support for protests with new warnings on gatherings* (July 2,  
2020, 1:50 PM), [https://www.sfgate.com/politics/article/Gavin-Newsom-protests-coronavirus-July-Fourth-ask-](https://www.sfgate.com/politics/article/Gavin-Newsom-protests-coronavirus-July-Fourth-ask-15383112.php)  
[15383112.php](https://www.sfgate.com/politics/article/Gavin-Newsom-protests-coronavirus-July-Fourth-ask-15383112.php).

1 written by human authors under the supernatural guidance of the Holy Spirit. Because it was  
2 inspired by God, the Bible is truth without error and is completely relevant to our daily lives.  
3 Doc. 1 ¶ 36.

4 According to sincerely-held religious beliefs and the commands of the Bible, Plaintiffs  
5 hold weekly worship services that include singing, prayer, recitation of scripture, and a sermon  
6 preached by the pastor. Doc. 1 ¶ 37. Singing and praying aloud is an integral part of worship for  
7 believers and Plaintiffs' churches. Doc. 1 ¶ 38. The book of Ephesians in the Bible commands  
8 that Plaintiffs "[b]e imitators of God," and "live a life of love, just as Christ loved us . . . be filled  
9 with the Holy Spirit. Speak to one another with psalms, hymns and spiritual songs. Sing and  
10 make music in your heart to the Lord, always giving thanks to God the Father for everything."  
11 Ephesians 5:1-2, 18-20. Doc. 1 ¶ 38. In addition, the Psalms in the Bible emphasize the  
12 importance of singing and worship. Psalm 89:1 says, "I will sing of the Lord's great love forever;  
13 with my mouth I will make your faithfulness known through all generations." Doc. 1 ¶ 39.  
14 Psalms 9:1 says, I will give thanks to you, Lord, with all my heart . . . I will be glad and rejoice  
15 in you; I will sing the praises of your name, O Most High." Doc. 1 ¶ 39. Psalm 95 speaks of the  
16 importance and necessity of singing together, as a body of Christ: "Come, let us sing for joy to  
17 the Lord; let us shout aloud to the Rock of our salvation. Let us come before him with  
18 thanksgiving and extol him with music and song." Doc. 1 ¶ 39. To prohibit group singing and  
19 chanting is to effectively prohibit corporate Christian worship by Plaintiffs. Doc. 1 ¶ 43.

## 20 ARGUMENT

21 In determining whether to grant a preliminary injunction, courts must consider four  
22 factors: (1) whether the movant has shown a likelihood of success on the merits, (2) whether  
23 there is a likelihood that the movant will suffer irreparable harm in the absence of an injunction,  
24 (3) whether the balance of the equities tips in the movant's favor, and (4) whether the injunction  
25 is in the public's interest. *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 20 (2008).<sup>9</sup>

26  
27 <sup>9</sup> Alternatively, "a preliminary injunction may issue where the likelihood of success is such that serious  
28 questions going to the merits were raised and the balance of hardships tips sharply in plaintiff's favor," so long  
as the plaintiff demonstrates irreparable harm and shows that the injunction is in the public interest. *Alliance for  
the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (citations and internal quotations and alterations

1 For the reasons explained below, Plaintiffs satisfy each of these requirements and are  
2 accordingly entitled to the requested relief.

3 **A. The Worship Ban Violates Plaintiffs’ Free Exercise Rights.**

4 The First Amendment protects the “free exercise” of religion, and fundamental to this  
5 protection is the right to gather and worship. *See W. Va. State Bd. of Educ. v. Barnette*, 319 U.S.  
6 624, 638 (1943). Neutral laws of general applicability that incidentally burden religious activity  
7 are not subject to strict scrutiny, which requires that the government have a compelling  
8 governmental interest that justifies the extent of the law. *Employment Div. v. Smith*, 494 U.S.  
9 872, 878 (1990). However, “[t]he principle that government, in pursuit of legitimate interests,  
10 cannot in a selective manner impose burdens only on conduct motivated by religious belief is  
11 essential to the protection of the rights guaranteed by the Free Exercise Clause.” *Church of the*  
12 *Lukumi Balalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1990). Indeed, “if the object of  
13 a law is to infringe upon or restrict practices because of their religious motivation, the law is not  
14 neutral . . . and it is invalid unless it is justified by a compelling interest and is narrowly tailored  
15 to advance that interest.” *Id.* at 533.<sup>10</sup>

16 The Worship Ban and Defendants’ enforcement thereof substantially burdens Plaintiffs’  
17 sincerely-held religious beliefs in a manner that is not “neutral” or “generally applicable” to both  
18 religious and non-religious conduct. *See id.* at 531. The Worship Ban is therefore subject to, and  
19 fails, strict scrutiny.

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22 \_\_\_\_\_  
23 omitted). A court employs a sliding scale when considering a plaintiff’s showing as to the likelihood of success  
24 on the merits and the likelihood of irreparable harm. *Id.* “Under this approach, the elements of a preliminary  
25 injunction test are balanced, so that a stronger showing of one element may offset a weaker showing of another.”  
*Id.* This sliding scale is not needed here, however, since Plaintiffs have made a strong showing of both likelihood  
of success on the merits and irreparable harm.

26 <sup>10</sup> The notion that courts should not employ the usual constitutional standards that govern Free Exercise claims  
27 such as *Lukumi*, in light of the ongoing pandemic, was explicitly rejected by Judge Collins in her dissenting opinion  
28 in *S. Bay United Pentecostal Church v. Newsom*, 959 F.3d 938 941-43 (9th Cir. 2020), and the majority in that  
case also relied on *Lukumi*. *See also First Baptist Church v. Kelly*, No. 20-1102-JWB, 2020 U.S. Dist. LEXIS  
68267, at \*19 (D. Kan. Apr. 18, 2020) (concluding that *Lukumi* provides the appropriate framework in reviewing  
COVID related executive orders).

1           **1. The Worship Ban is not neutral or generally applicable between religious**  
2           **and secular assemblies.**

3           The Free Exercise Clause bars even “subtle departures from neutrality” on matters of  
4 religion.” *Masterpiece Cakeshop v. Colorado Civil Rights Comm’n*, 138 S. Ct. 1719, 1731  
5 (2018) (quoting *Lukumi*, 508 U.S. at 534). Here, that means Defendants, even when addressing  
6 the COVID-19 pandemic, are obliged “to proceed in a manner neutral towards and tolerant of  
7 [Plaintiffs’] religious beliefs.” *Id.* Yet, that is precisely what Defendants have failed to do. “[T]he  
8 minimum requirement of neutrality is that a law not discriminate on its face.” *Id.* A law “lacks  
9 facial neutrality if it refers to a religious practice without a secular meaning discernable from  
10 the language or context.” *Lukumi*, 508 U.S. at 533. The Worship Ban lacks facial neutrality and  
11 general applicability because it is only applicable to “places of worship.” Currently in  
12 Mendocino County, worship services, together with protests, fitness centers, malls, offices for  
13 non-essential actors and personal care services, as well as day camps, hotels, childcare centers,  
14 schools, or music, tv and film production are permitted to remain open. *Singing and chanting is*  
15 *allowed at all of these secular gatherings and services; however, it is banned inside places of*  
16 *worship.* Doc. 1 ¶¶ 20, 26.

17           In *Lukumi*, the City of Hialeah’s ban on animal sacrifice was not “neutral” or “generally  
18 applicable” because it banned the Church of Lukumi Babalu’s ritualistic animal sacrifices, while  
19 at the same time allowing most other kinds of animal killing, including kosher slaughtering and  
20 killing animals for non-religious reasons. *Id.* at 536. Here, the Worship Ban is not neutral  
21 because it bans only places of worship from singing or chanting indoors, while at the same time  
22 allowing every other open establishment to engage in singing or chanting, whether indoors or  
23 outdoors.

24           Defendant Newsom also illustrated a lack of neutrality by supporting and encouraging  
25 mass protests, sending a message that chanting during protests is deserving of preferential  
26 treatment. In *Soos v. Cuomo*, No. 1:20-cv-651, 2020 U.S. Dist. LEXIS 111808 (N.D. N.Y. June  
27 26, 2020), the Governor of New York and the New York City Mayor openly encouraged  
28 protesters gathering in large numbers in New York, while continuing to prohibit in-person

1 religious gatherings. *Id.* at \*3-19. The court issued a preliminary injunction enjoining the  
2 enforcement of capacity limitations on religious worship because the disparate treatment for  
3 protesters as compared to religious congregants in a worship service violated the First  
4 Amendment. *Id.*, at \*21-22, 37 (“[I]t is plain to this court that the broad limits of that executive  
5 latitude have been exceeded.”). The court found that a restriction on indoor worship services  
6 that is not applied to protesters removes the law from generally applicability and thus mandates  
7 strict scrutiny. *Id.* at \*33. Here, Newsom has not applied the singing or chanting ban to protests,  
8 where chanting and loud yelling is commonplace and, in fact, a hallmark of a protest. The  
9 Worship Ban is therefore subject to strict scrutiny.

10 **2. The Worship Ban fails strict scrutiny because it is not narrowly tailored to**  
11 **serve the government’s interest in health and safety.**

12 Because the Worship Ban is not neutral or generally applicable, it “must undergo the  
13 most rigorous of scrutiny.” *Lukumi*, 508 U.S. at 546. The requirements to satisfy this scrutiny  
14 are so high that the government action will only survive this standard in rare cases, and the  
15 government bears the burden of meeting this exceptionally demanding standard. *Id.* Therefore,  
16 Defendants must prove that only banning places of worship from singing or chanting (while  
17 leaving secular singing and chanting untouched) “advance[s] interests of the highest order and  
18 [is] narrowly tailored in pursuit of those interests.” *Id.* Defendants cannot satisfy this highest  
19 level of review.

20 While enacting reasonable health and safety measures to curb the spread of the COVID-  
21 19 may generally be considered a “compelling interest,” Defendants’ Worship Ban and  
22 enforcement thereof violate the Free Exercise Clause because they are not even close to being  
23 narrowly tailored to advance that interest. As in *Lukumi*, the government’s “proffered objectives  
24 are not pursued with respect to analogous non-religious conduct, and those interests could be  
25 achieved by narrower ordinances that burdened religion to a far lesser degree.” *Id.* at 546. In  
26 other words, the Worship Ban is not narrowly tailored because it is both underinclusive *and*  
27 overbroad. *Id.*; *see also Spell v. Edwards*, No. 20-30358, 2020 U.S. App. LEXIS 19148 at \*12  
28 (5th Cir. June 18, 2020) (Ho, J., concurring) (“The [Louisiana] Governor no doubt issued those

1 [stay-at-home orders restricting in-person church services] out of sincere public health concerns.  
2 To survive First Amendment scrutiny, however, those concerns must be applied consistently,  
3 not selectively. And it is hard to see how that rule is met here if the record is developed to take  
4 account of the recent protests.”).

5 The Worship Ban is underinclusive because it does not prohibit the identical conduct—  
6 singing or chanting—in any other context besides indoor religious services. One can freely sing  
7 or chant indoors at any other open establishment, including protests, fitness centers, malls,  
8 offices for non-essential actors and personal care services, as well as day camps, hotels, childcare  
9 centers, schools, or music, television and film production. Defendants cannot reasonably argue  
10 that singing or chanting at religious services poses unique health risks that do not arise with  
11 singing or chanting in other contexts, such as at a protest, day camp, or a music production. *See*  
12 *Roberts v. Neace*, 958 F.3d 409, 413 (6th Cir. 2020) (explaining that “a law that discriminates  
13 against religious practices usually will be invalidated because it is the rare law that can be  
14 ‘justified by a compelling interest and is narrowly tailored to advance that interest’”) (citing  
15 *Lukumi*, 508 U.S. at 553); *Spell*, 2020 U.S. App. LEXIS 19148 at \*13-14 (Ho, J., concurring)  
16 (explaining in a COVID-related case, “[u]nderinclusive rules fail strict scrutiny just as  
17 overinclusive ones do. A ‘law cannot be regarded as protecting an interest of the highest order  
18 when it leaves appreciable damage to that supposedly vital interest unprohibited.’”) (quoting  
19 *Lukumi*, 508 U.S. at 547).

20 The Worship Ban is overbroad because the State’s interest in mitigating or preventing  
21 churchgoers from spreading COVID-19 can be achieved by employing narrower tailoring and  
22 applying far less restrictive means by permitting Plaintiffs to sing and chant in a safe manner  
23 while following CDC and state social distancing and mask-wearing guidelines. A church can  
24 comply with social distancing protocols just as any other open establishment.

25 Defendants might suggest that Plaintiffs could participate in an online service or sing  
26 during outdoor services and thus satisfy their desire for singing or chanting during worship. But  
27 online services are not sufficient because, for instance, some members may not have access to  
28 online resources and some may not want to practice their religious faith in that manner. *See On*



1 *Fire Christian Ctr., Inc. v. Fischer*, No. 3:20-CV-264-JRW, 2020 U.S. Dist. LEXIS 65924 at  
2 \*14 (W.D. Ky. Apr. 11, 2020) (explaining that the City may “suggest that On Fire members  
3 could participate in an online [religious] service [during the COVID pandemic] and thus satisfy  
4 their longing for communal celebration. But some members may not have access to online  
5 resources. And even if they all did, the Free Exercise Clause protects their right to worship as  
6 their conscience commands them.”).

7 Likewise, outdoor services may not be practical in the heat of summer or because the  
8 property is not conducive for such services. And even if Plaintiffs, and all those who worship  
9 with them, could do solely online or outdoor services, the Free Exercise Clause protects their  
10 right to worship as their conscience commands them. It is not the role of the State of California,  
11 nor the counties, to tell religious believers how to worship, so long as their belief in the religious  
12 importance of the practice is sincere. The Free Exercise Clause protects sincerely-held religious  
13 beliefs that are at times not “acceptable, logical, consistent, or comprehensible to others.”  
14 *Lukumi*, 508 U.S. at 531 (quoting *Thomas v. Review Bd. of Indiana Emp. Sec. Div.*, 450 U.S.  
15 707, 714 (1981)).

16 For the above-stated reasons, the Worship Ban violates Plaintiffs’ Free Exercise rights.

17 **B. The Worship Ban Violates Plaintiffs’ Freedom of Speech.**

18 Defendants are infringing upon and burdening Plaintiffs’ rights to engage in religious  
19 worship and expression, which are fully protected by the Free Speech Clause of the First  
20 Amendment. *See, e.g., Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 110 (2001); *Widmar*  
21 *v. Vincent*, 454 U.S. 263, 269 (1981). Thus, the ability of religious leaders and congregants to  
22 sing or chant freely within their respective places of worship—without fear of criminal  
23 penalty—falls well within the protections of the First Amendment. *Widmar*, 454 U.S. at 269 n.6  
24 (rejecting the notion that the government has more leeway to restrict or burden religious worship  
25 than other forms of religious expression).

26 In deciding whether a speech regulation is content-based or content-neutral, a court must  
27 begin with the text itself: does it facially discriminate based on content? In this case, the answer  
28 is *yes*. Here, the ban on singing and chanting in places of worship is, on its face, content-based

1 discrimination against Plaintiffs’ religious speech. Singing or chanting that occurs within any  
2 given place of worship is religious in nature, and that is clearly the case with Plaintiffs’ places  
3 of worship. The ban is content-based because it is applied solely to the religious speech of those  
4 attending services in a place of worship; there is no ban on the speech of those who attend other  
5 indoor activities that are permitted to take place in the county where Plaintiffs are located.<sup>11</sup>  
6 Notably, the government has not similarly banned singing, chanting, and even yelling at political  
7 or social protests and demonstrations, whether indoor or outdoor. “If officials are now  
8 exempting protesters, how can they justify continuing to restrict worshippers? The answer is  
9 that they can’t. Government does not have carte blanche, even in a pandemic, to pick and choose  
10 which First Amendment rights are open’ and which remain ‘closed.’” *See Spell*, 2020 U.S. App.  
11 LEXIS 19148 at \*10-11 (Ho, J., concurring)

12 Content-based restrictions on speech are subject to strict scrutiny. *See, e.g., Barr v. Am.*  
13 *Ass’n of Political Consultants*, No. 19-631, 2020 U.S. LEXIS 3544, at \*11 (U.S. July 6, 2020).  
14 Here, Defendants will assert that they have a compelling state interest—containing the COVID-  
15 19 pandemic—but they cannot show that there is no less restrictive alternative than banning  
16 singing or chanting inside places of worship as previously discussed.

17 Governor Newsom has supported and encouraged the massive protests that are occurring  
18 in California without requiring, or even encouraging, protestors to stop singing and chanting.  
19 Yet it is well documented that attendees of these protests routinely fail to adhere to the social  
20 distancing requirement of six feet of physical space, often do not wear masks, and freely engage  
21 in chanting, singing, and yelling without governmental interference. *See Spell*, 2020 U.S. App.  
22 LEXIS 19148 at \*12-13 (Ho, J., concurring) (“It is common knowledge, and easily proved, that  
23 protestors do not comply with social distancing requirements. But instead of enforcing the  
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27 <sup>11</sup> Conversely, the prohibition on singing and chanting in places of worship is not a content-neutral time, place,  
28 and manner restriction; it is an absolute ban on such activities during indoor religious services, and there is no  
content-neutral justification for treating indoor religious gatherings less favorably than indoor non-religious  
gatherings.

1 [Louisiana] Governor’s orders, officials are encouraging the protests . . . If protests are exempt  
2 from social distancing requirements, then worship must be too.”<sup>12</sup>

3 At the same time, however, those wishing to exercise their free speech rights in a religious  
4 setting, including Plaintiffs and their leaders and congregants, have been *required* to adhere to  
5 a host of requirements such as physical distancing rules, attendance limits, face mask  
6 requirements, and now, prohibitions on singing religious songs or chanting religious creeds.  
7 Doc. 1 Exs. A & D, pp. 7(ii), 14. Defendants’ failure to similarly regulate those exercising their  
8 rights to free speech and expression at other indoor locations, including at indoor protests, shows  
9 a clear bias and illustrates the content-based nature of the regulations. Thus, the Worship Ban  
10 fails to survive strict scrutiny and violates Plaintiffs’ free speech rights.

11 **C. The Worship Ban Violates Plaintiffs’ Equal Protection Rights.**

12  
13 <sup>12</sup> For example, a protest on July 1, 2020, in Los Angeles, California:



27 <https://twitter.com/MayorOfLA/status/1278515878540140546>. And a protest on July 13, 2020, in Martinez,  
28 California:

<https://abc7news.com/martinez-protest-blm-mural-nicole-anderson-ca/6313415/>

1 Defendants have singled out religious and cultural singing and chanting for disfavored  
2 treatment. The Equal Protection Clause of the Fourteenth Amendment “commands that no State  
3 shall deny to any person within its jurisdiction the equal protection of the laws.” *City of Cleburne*  
4 *v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). It is well-established that classifications that  
5 infringe upon a fundamental right, such as the “fundamental right to freedom of expression,” are  
6 subject to strict scrutiny. *Nunez by Nunez v. City of San Diego*, 114 F.3d 935, 944-46, 949-50  
7 (9th Cir. 1997).

8 The Supreme Court’s decision in *Police Department of Chicago v. Mosley*, 408 U.S. 92  
9 (1972) illustrates that Defendants have violated Plaintiffs’ right to equal protection of the law in  
10 this case. In *Mosley*, the plaintiff (Mosley) peacefully walked the public sidewalk near a school  
11 with a sign that alleged that the school engaged in racial discrimination. *Id.* at 93. The city  
12 enacted an ordinance that banned demonstrating within 150 feet of a school while it was in  
13 session but exempted peaceful picketing of a school involved in a labor dispute. *Id.* at 92-93.  
14 Mosley’s lawsuit alleged a violation of his First Amendment rights and a denial of equal  
15 protection. *Id.* at 94.

16 The Supreme Court held that “the ordinance is unconstitutional because it makes an  
17 impermissible distinction between labor picketing and other peaceful picketing.” *Id.* The Court  
18 emphasized that the standard that substantial government interests “cannot be pursued by means  
19 that broadly stifle fundamental personal liberties when the end can be more narrowly achieved’  
20 . . . has been carefully applied when First Amendment interests are involved.” *Id.* at 101, n.8.  
21 As such, there was no justification for distinguishing among speakers due to the content of their  
22 speech; rather, the government had to prove (among other things) that the prohibited activity  
23 was “clearly more” harmful to the government interest than the permitted activity. *Id.* at 100-  
24 02.

25 The Court concluded that there was no legitimate basis for treating non-labor picketing  
26 less favorably than labor picketing, as “government has no power to restrict expression because  
27 of its message, its ideas, its subject matter, or its content” and “may not select which issues are  
28 worth discussing or debating in public facilities.” *Id.* at 95-96. Particularly noteworthy for the

1 present case is the Court’s observation that several of its prior cases involved government  
2 violations of the constitutional rights of religious groups through discriminatory limitations on  
3 their ability to engage in religious services. *Id.* at 96-97 (discussing cases).

4 Here, as in *Mosley* and in the religious discrimination cases that *Mosley* discussed,  
5 Defendants have improperly “select[ed] which issues are worth discussing or debating” by fully  
6 protecting—and even encouraging—protests that include singing and chanting, while cracking  
7 down on religious singing and chanting. *See id.* at 95-97. Defendants’ interest in minimizing the  
8 spread of COVID-19 is already furthered by numerous means that do not “broadly stifle  
9 fundamental personal liberties,” such as content-neutral limitations on the number of attendees  
10 at events, social distancing requirements, and mask wearing requirements. *See id.* at 101 n.8.

11 Moreover, whatever *infinitesimal*, hypothetical risk there may be of a religious worshiper  
12 spreading COVID-19 through singing or chanting while wearing a mask, socially distancing,  
13 and attending a small, attendance-capped service, that risk is not *greater* than—and is almost  
14 certainly *less* than—the risk posed by the countless *large* groups of *closely-packed* singing and  
15 chanting protestors who are not subject to a singing and chanting ban or in other indoor locations  
16 where similar activities take place. Indeed, the fact that the State has not attempted to infringe  
17 upon the constitutional rights of protestors and demonstrators by telling them they cannot sing  
18 or chant is itself strong evidence that the purported risk from singing or chanting can be  
19 effectively mitigated through less stifling measures.

20 In sum, suppressing religious expression in the form of songs and chants infringes upon  
21 multiple fundamental rights and is not the least restrictive way to achieve a compelling  
22 government interest, as evidenced by the fact that non-religious singing and chanting is  
23 permitted. The Worship Ban violates Plaintiffs’ Equal Protection rights.

24 **D. The Worship Ban Violates Plaintiffs’ Establishment Clause Rights.**

25 As the Supreme Court has noted, the First Amendment recognizes “that religious beliefs  
26 and religious expression are too precious to be either proscribed or prescribed by the State,” and  
27 “the Establishment Clause is a specific prohibition on forms of state intervention in religious  
28 affairs.” *Lee v. Weisman*, 505 U.S. 577, 589, 591 (1992). The Supreme Court has interpreted the

1 Establishment Clause to “mandate[] governmental neutrality between religion and religion, and  
2 between religion and nonreligion.” *McCreary Cnty. v. ACLU*, 545 U.S. 844, 860 (2005).  
3 Additionally, the Supreme Court has observed that the Establishment Clause “affirmatively  
4 mandates accommodation, not merely tolerance, of all religions, and *forbids hostility* toward  
5 any. Anything less would require the ‘callous indifference’ we have said was never intended by  
6 the Establishment Clause.” *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984) (internal citation  
7 omitted) (emphasis added). Although the Court has applied different tests at various times, the  
8 most frequently cited one states that government action violates the Establishment Clause if (1)  
9 it lacks a primarily secular purpose, (2) the primary effect is to advance or inhibit religion (or a  
10 particular religious or anti-religious viewpoint), or (3) it creates an excessive government  
11 entanglement with religion. *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971).

12 Here, Defendants have specifically prohibited indoor singing or chanting only in places  
13 of worship, other religious centers, and cultural centers, even though attendance caps, social  
14 distancing requirements, and mask wearing requirements are already in place. Doc. 1 Exs. A &  
15 D, pp. 7(ii), 14. By expressly reaching into places of worship during their religious services to  
16 suppress disfavored core First Amendment-protected religious worship and expression, while  
17 leaving favored secular singing and chanting untouched, the Defendants have violated the  
18 Establishment Clause under all three prongs of the *Lemon* test.

19 That the ban on singing and chanting in places of worship is plainly discriminatory  
20 against, and hostile to, religious worship and expression itself strongly suggests that the  
21 government’s primary purpose was not religion-neutral. To the contrary, “openly available data  
22 support[s] [the] commonsense conclusion” that the government has made a value judgment that  
23 political and social expression in the form of protests is substantially more important than  
24 religious expression in the form of worship, such that the former is excluded from the ban on  
25 singing and chanting while the latter is included; this evidences an impermissible government  
26 purpose. *See McCreary Cnty.*, 545 U.S. at 862-63. Similarly, the intended, and primary, effect  
27 of the prohibition targeting places of worship is to suppress religious worship and expression  
28 while leaving nonreligious worship and expression largely untouched. This is contrary to the

1 First Amendment’s command that the government cannot favor nonreligion over religion. *See*  
2 *id.* at 860.

3 As to *Lemon*’s final prong, the ban on singing and chanting in places of worship creates  
4 excessive, improper government entanglement with religion. *See Agostini v. Felton*, 521 U.S.  
5 203, 233 (1997). Consider what monitoring and enforcing compliance with the ban would likely  
6 entail:

- 7 • Sending police officers or other government agents into places of worship  
8 to monitor the religious activities of religious leaders and congregants.
- 9 • Having government agents review internet videos of worship services to  
10 check whether any prohibited singing or chanting occurred.
- 11 • Investigating anonymous tips that a religious service at a place of worship  
12 crossed the line from permissible talking to impermissible singing or chanting.
- 13 • Enforcement efforts (fines, criminal charges, etc.) against places of worship,  
14 religious leaders and/or congregants for singing or chanting during a worship  
15 service.<sup>13</sup>

16 The First Amendment prohibits this kind of entanglement between the government and  
17 places of worship. *Cf. Lemon*, 403 U.S. at 620-21 (“[T]he very restrictions and surveillance  
18 necessary to ensure that teachers play a strictly non-ideological role give rise to entanglements  
19 between church and state.”). Accordingly, the Worship Ban violates the Establishment Clause.

20 **E. Plaintiffs Face Imminent Irreparable Harm Absent Injunctive Relief.**

21 Without an injunction preventing Defendants from enforcing the Worship Ban, Plaintiffs  
22 will continue to suffer irreparable harm to their constitutional rights because the Worship Ban  
23 imposes a criminal penalty for singing or chanting in a place of worship and deprives Plaintiffs  
24 from practicing their faith freely and fully without fear of prosecution. Doc. 1 ¶¶ 35-41, 43 &  
25 ECF pp. 18-19;<sup>14</sup> *see Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of First Amendment

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26 <sup>13</sup> The ban, and its enforcement, bear several hallmarks of impermissible entanglement: the  
27 institutions at issue (places of worship) are inherently religious in character; the activity that the  
28 government will be monitoring (singing and chanting during worship services) is quintessential religious  
activity that has no separable, distinct secular component; religious services occur frequently each week,  
year round, so compliance could not be monitored once a year as is the case with some school aid  
programs; and government monitoring of religious services occurring in places of worship is highly  
politically divisive. *See Roemer v. Bd. of Public Works*, 426 U.S. 736, 762-66 (1976).

<sup>14</sup> Plaintiffs cite to their Verified Complaint in lieu of an affidavit to support the existence of  
irreparable injury. *See* L.R. 231(c)(4)

1 freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury”).  
2 Indeed, punishing or threatening to punish Plaintiffs for worshipping as they wish inflicts  
3 irreparable harm. *See Roberts*, 958 F.3d at 416. Moreover, Plaintiffs’ irreparable injuries cannot  
4 adequately be compensated by money damages or any other available remedy at law. *See*  
5 *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014) (“Irreparable harm is  
6 traditionally defined as harm for which there is no adequate legal remedy, such as an award of  
7 damages.”).

8 **F. The Balance of Equities Tips in Plaintiffs’ Favor and Enjoining The Worship**  
9 **Ban Serves The Public Interest.**

10 With regard to the remaining factors to establish injunctive relief, “[t]he balance of  
11 equities and public interest factors merge when [as here] the government is the opposing party.”  
12 *Chamber of Commerce of the United States v. Becerra*, No. 2:19-cv-02456-KJM-DB, 2020 U.S.  
13 Dist. LEXIS 21850 at \*56 (E.D. Cal. Feb. 7, 2020). Consideration of the various interests at  
14 hand demonstrates that a preliminary injunction is warranted.

15 Enjoining enforcement of the Worship Ban will not harm Defendants. There is no  
16 legitimate or compelling government interest that would be furthered by the unconstitutional  
17 application of the Worship Ban, especially when (1) Defendants do not impose the same singing  
18 and chanting prohibitions in many secular settings, and (2) Plaintiffs are obligated to practice,  
19 and committed to practicing, social distancing, wearing masks, etc. while in their places of  
20 worship. Doc. 1 Exs. A & D, pp. 7(ii), 14. In short, “California has no legitimate interest in  
21 enforcing an unconstitutional law,” such as the Worship Ban. *Nat’l Ass’n of Wheat Growers v.*  
22 *Zeise*, 309 F. Supp. 3d 842, 854 (E.D. Cal. 2018) (internal quotation marks and citations  
23 omitted); *see also Becerra*, 2020 U.S. Dist. LEXIS 21850 at \*57 (“[I]t would not be equitable  
24 or in the public’s interest to allow the state to continue to violate . . . federal law, especially when  
25 there are no adequate remedies available to compensate [plaintiffs] for the irreparable harm that  
26 would be caused by the continuing violation.”) (internal quotation marks and citations omitted).

27 Indeed, as Judge Ho noted in his concurring opinion in *Spell*,

28



1 The First Amendment does not allow our leaders to decide which rights to honor  
2 and which to ignore. In law, as in life, what’s good for the goose is good for the  
3 gander. In these troubled times [dealing with the COVID pandemic], nothing  
4 should unify the American people more than the principle that freedom for me, but  
5 not for thee, has no place under our Constitution.

6 *Spell*, 2020 U.S. App. LEXIS at \*15. Along those lines, “treatment of similarly situated entities  
7 in comparable ways serves public health interests at the same time it preserves bedrock free-  
8 exercise guarantees.” *Roberts*, 958 F.3d at 416. Furthermore, the public interest is well-served  
9 by enjoining Defendants from unlawfully burdening Plaintiffs constitutional rights. As the Ninth  
10 Circuit has explained, “it is always in the public interest to prevent the violation of a party’s  
11 constitutional rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal  
12 quotation marks omitted). Moreover, “the public has a profound interest in men and women of  
13 faith worshiping together . . . in a manner consistent with their conscience.” *On Fire*, 2020 U.S.  
14 Dist. LEXIS 65924 at \*21.

15 **G. No Bond Should Be Required.**

16 This Court should impose no bond under Fed. R. Civ. P. 65(c). Any bond would harm  
17 Plaintiffs by causing them to pay to defend and assert their constitutional rights, and allowing  
18 Plaintiffs to exercise their rights would not impose any monetary cost upon Defendants. *See*,  
19 *e.g.*, *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003) (discretion to waive bond); *Bible*  
20 *Club v. Placentia-Yorba Linda Sch. Dist.*, 573 F. Supp. 2d 1291, 1302 n. 6 (C.D. Cal. 2008) (no  
21 bond where First Amendment rights were at issue, and an injunction would impose minimal, if  
22 any, damage upon the defendant).

23 **CONCLUSION**

24 Accordingly, Plaintiffs Calvary Chapel of Ukiah and Calvary Chapel Fort Bragg  
25 respectfully request that this Court enter an order granting their motion for a preliminary  
26 injunction and enjoining Defendants Gavin Newsom, Sonia Angell, and Noemi Dooham, M.D.,  
27 in their official capacities, along with their officers, agents, servants, employees, attorneys, and  
28 other persons who are in active concert or participation with them, from directly or indirectly

1 taking any action to prohibit singing or chanting in Plaintiffs' places of worship through  
2 enforcement of the "Worship Ban."

3 Respectfully submitted,

4 TYLER & BURSCH, LLP

5  
6 Dated: July 24, 2020

/s/ Robert H. Tyler, Esq.

7 Robert H. Tyler  
8 Attorney for Plaintiffs

9 AMERICAN CENTER FOR LAW &  
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NATIONAL CENTER FOR LAW &  
POLICY

Dated: July 24, 2020

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