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10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12 SAN JOSE DIVISION

<p>14</p> <p>15 RITESH TANDON, et al.,</p> <p>16 Plaintiffs,</p> <p>17 v.</p> <p>18 GAVIN NEWSOM, et al.,</p> <p>19 Defendants.</p>	<p>5:20-cv-07108-LHK</p> <p>DEFENDANTS’ SUPPLEMENTAL BRIEF IN SUPPORT OF OPPOSITION TO PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION</p> <p>Date: December 17, 2020 Time: 1:30 p.m. Courtroom: 8 Judge: The Honorable Lucy H. Koh Trial Date: None set Action Filed: October 13, 2020</p>
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22 State and County Defendants file this joint brief in response to the Court’s December 1,
 23 2020 supplemental briefing order, ECF No. 38, and to update the Court on recently-issued orders.

24 **I. ROMAN CATHOLIC DIOCESE V. CUOMO DOES NOT IMPACT THIS CASE**

25 In *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. ___, 2020 WL 6948354 (Dec. 3,
 26 2020) (per curiam) (*Cuomo*), the Supreme Court enjoined restrictions on worship services that the
 27 Court found likely violated the Free Exercise Clause because they targeted and discriminated
 28

1 against religious activity. *Cuomo* does not implicate most of the claims in this case because most
2 Plaintiffs here do not base their challenges on the Free Exercise Clause. The claims of those who
3 do are distinguishable because this case involves no evidence of targeting, and it concerns neutral
4 restrictions on private, in-person gatherings.

5 **A. The Challenged Orders Are Neutral and Generally Applicable**

6 In *Cuomo*, the Supreme Court enjoined some but not all emergency restrictions imposed by
7 New York on in-person worship services. These restrictions were part of a “Cluster Action
8 Initiative” instituted by New York, which identified COVID-19 “hot spots” and created zones of
9 enhanced restrictions around them. See *Roman Catholic Diocese of Brooklyn v. Cuomo*, 2020
10 WL 6120167, at *2 (E.D.N.Y. Oct. 16, 2020). In the center “red” zone, the Initiative barred all
11 “non-essential” businesses, closed schools, and prohibited in-restaurant dining but allowed
12 worship services “subject to a capacity limit of 25% maximum occupancy or 10 people,
13 whichever is fewer” and imposed no restriction at all on “essential” businesses. *Id.* In the
14 “orange” zone, both essential and non-essential businesses faced no capacity limits, but worship
15 services were still subject to a “capacity limit of the lesser of 33% maximum occupancy or 25
16 people.” *Id.* at *3. In the outermost “yellow” zone, restrictions were further eased, with worship
17 services at “50% . . . maximum capacity.” *Id.* The Supreme Court enjoined the Initiative’s “10-
18 and 25-person occupancy limits,” but left untouched its maximum occupancy restrictions.
19 *Cuomo*, 2020 WL 6948354, at *1.

20 In finding the plaintiffs in that case likely to succeed in challenging the constitutionality of
21 New York’s “very severe” numerical caps, the Supreme Court pointed to a statement by the
22 dissent in the court of appeals that “the challenged rules can be viewed as targeting the ‘ultra-
23 Orthodox [Jewish] community.’” *Id.* (quoting *Agudath Israel of Am. v. Cuomo*, ___ F.3d ___, 2020
24 WL 6750495, at *5 (2d Cir. Nov. 9, 2020) (Park, J., dissenting)).¹ The Court also found that New
25 York’s attendance restrictions were not neutral towards religion “because they single out houses

26 ¹ This statement was based on New York Governor’s warning that “if the ‘ultra-Orthodox
27 [Jewish] community’ would not agree to enforce the rules, ‘then we’ll close the institutions
28 down.’” *Agudath Israel of Am.*, 2020 WL 6750495, at *5 (Park, J., dissenting). There was also
evidence that New York “gerrymandered the boundaries of red and orange zones to ensure that
heavily Orthodox areas were included.” *Cuomo*, 2020 WL 694835420, at *1.

1 of worship for especially harsh treatment.” *Id.* In the red zones created by New York’s Initiative,
2 the Court observed, “while a synagogue may not admit more than 10 persons, businesses
3 categorized as ‘essential’ may admit as many people as they wish” and the list of “essential”
4 businesses is “not limited to those [services] that can be regarded as essential.” *Id.* at *2. The
5 Court found the disparate treatment “even more striking” in the orange zone where worship
6 services are limited to 25 persons but “even non-essential businesses may decide for themselves
7 how many people to admit.” *Id.* It concluded that New York’s restrictions were not neutral and
8 unlikely to satisfy strict scrutiny. *Id.* Notably, when plaintiffs in another case asked to enjoin
9 California’s less stringent restrictions on worship services,² the Court declined to do so,
10 remanding the case to the district court with instructions to consider such relief in light of *Cuomo*.
11 *See Harvest Rock Church v. Newsom*, 592 U.S. ___, 2020 WL 7061630 (Dec. 3, 2020).

12 The gatherings guidance challenged by the Plaintiffs here, wishing to hold informal
13 gatherings to worship and study the bible in their homes, are very different from the restrictions
14 on worship services considered in *Cuomo* or even *Harvest Rock*.³ Unlike the New York
15 guidelines for houses of worship, the gatherings guidance here applies to all gatherings not
16 covered by other guidance, whether secular or religious. In counties that fall into the Blueprint’s
17 highest tier, the gathering guidance prohibits indoor, in-person gatherings of individuals outside
18 the immediate household, and it limits outdoor gatherings to a maximum of three households.
19 Similarly, in counties in lower tiers, gatherings, both indoor and outdoor, are limited to three
20 households. Because this guidance applies county by county, it raises none of the

21 _____
22 ² While California bars indoor worship services in counties in the Blueprint’s highest tiers,
23 it allows worship services to be conducted outdoors without any limit on attendance. By contrast,
24 the restrictions considered by the Supreme Court in *Cuomo* limited attendance at outdoor as well
25 as indoor services. *See* New York Forward: Cluster Action Initiative, available at
26 <https://forward.ny.gov/cluster-action-initiative> (last accessed Dec. 6, 2020).

27 ³ On December 3, 2020, in response to the alarming, and indeed, exponential rise in case
28 infection rates, as well as the stress on ICU capacity across the State and reports that available
ICU beds were projected to be at-capacity by mid-December, a supplemental Regional Stay at
Home Order issued, in addition to the Blueprint, which implements stricter measures in larger
regions based on ICU bed availability. *See* California Department of Public Health, “Regional
Stay at Home Order,” December 3, 2020, available at [https://www.gov.ca.gov/wp-
content/uploads/2020/12/12.3.20-Stay-at-Home-Order-ICU-Scenario.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/12/12.3.20-Stay-at-Home-Order-ICU-Scenario.pdf) (last accessed
December 7, 2020).

1 gerrymandering concerns that the micro-targeted zones imposed by New York raised. And there
 2 is no evidence that California officials intended the guidance to target any religious group. To the
 3 contrary, the restrictions imposed by the Blueprint are based on an objective, science- and data-
 4 based analysis of the risk of transmission posed by those activities, Watt Decl. ¶¶ 78-80, 85,
 5 Rutherford Decl. ¶¶ 48-49, 55-57, which a majority of the Supreme Court has recognized is
 6 entitled to deference.⁴

7 The Blueprint takes a similarly fine-tuned approach to restrictions on other activities, which
 8 are also calibrated to the specific risk posed by the activities and the status of the disease in the
 9 relevant county.⁵ *Id.*; Rutherford Decl. ¶¶ 74-82; Stoto Decl. ¶¶ 18-19; Watt Decl. ¶¶ 45-53.
 10 Accordingly, grocery stores, and other businesses where close, interpersonal contact is transient
 11 and the risk is therefore lower, are subject to different capacity and sanitation requirements. But,
 12 contrary to Plaintiffs' suggestion (ECF No. 39 at 16), grocery stores and other businesses are not
 13 permitted to operate without any capacity restriction, as was the case with many restrictions at
 14 issue in *Cuomo*; instead, retail businesses are permitted to operate at only 25% capacity in Tier 1.

15 Similarly, while, as Plaintiffs point out, houses of worship are permitted to host much larger
 16 gatherings than in-home gatherings, ECF No. 18 at 20, they are permitted to do so only if they
 17 satisfy numerous safety requirements, designed to reduce the risk of transmission, including,
 18 among others, cleaning and disinfecting protocols, as well as pre-existing non-COVID-related
 19 requirements based on their locality (such as permit requirements). In theory, Plaintiffs could
 20 satisfy these house of worship requirements and conduct a worship service under the guidance in

21 ⁴ See *Cuomo*, slip op. 8 (Kavanaugh, J., concurring) (“The Constitution principally
 22 entrusts the safety and health of the people to the politically accountable officials of the States,”
 23 and “[f]ederal courts therefore must afford substantial deference to state and local authorities
 24 about how best to balance competing policy considerations during the pandemic”) (quoting *South
 25 Bay*, 140 S. Ct. at 1613) (Roberts, C.J., concurring)); *id.* at 9 (Roberts, C.J., dissenting)
 26 (reaffirming position in *South Bay*); *id.* at 12 (Breyer, J., dissenting) (“[C]ourts must grant elected
 27 officials broad discretion when they undertake to act in areas fraught with medical and scientific
 28 uncertainties”); *id.* (Sotomayor, J., dissenting) (“Justices of this Court play a deadly game second
 guessing the expert judgment of health officials about the environments in which a contagious
 virus, now infecting a million Americans each week, spreads most easily”).

⁵ This approach is in keeping with recent guidance issued by the CDC, which advises state
 and local governments to restrict indoor spaces that have the highest risk of transmission. CDC,
 “Summary of Guidance of Public Health Strategies to Address High Levels of Community
 Transmission of SARS-CoV-2 and Related Deaths,” December 3, 2020, available at
<https://www.cdc.gov/mmwr/volumes/69/wr/mm6949e2.htm> (last accessed December 7, 2020).

1 their home, but Plaintiffs have not alleged that they intend to do so, only vaguely stating that they
2 can follow the State’s “health and hygiene guidelines.” ECF No. 18 at 31, ECF No. 39 at 16.

3 Thus, the gatherings guidance challenged by Plaintiffs under the Free Exercise Clause is a
4 neutral and generally applicable rule, and the Supreme Court’s opinion in *Cuomo* does not affect
5 the analysis or application of the guidance, much less subject it to strict scrutiny.

6 **B. Alternatively, Defendants Should Be Permitted to Show the Challenged**
7 **Orders Are Narrowly Tailored to Support a Compelling State Interest**

8 Even if this Court were to find the State’s gathering guidance subject to strict scrutiny
9 under *Cuomo* preliminary injunction relief would still be inappropriate because the restrictions on
10 private, indoor and outdoor in-person gatherings are justified by a compelling governmental
11 interest, and the State and County Defendants should be permitted to show that they are narrowly
12 tailored to advance that interest. Far from suggesting that these restrictions do not serve a
13 compelling interest, in *Cuomo*, the Supreme Court acknowledged that “[s]temming the spread of
14 COVID-19 is unquestionably a compelling interest.” *Cuomo*, 2020 WL 6948354, at *2.
15 Moreover, although State Defendants have not yet addressed narrow tailoring in their briefing, the
16 gathering guidance clearly directly advances that compelling interest because it restricts physical
17 interactions during which COVID-19 may be unknowingly spread by individuals who are
18 asymptomatic and do not know that they may infect others, who in turn are unaware of the threat.
19 Under the Blueprint’s nuanced and fine-tuned approach imposing restrictions on an activity-by-
20 activity basis based on risk, the gatherings guidance is “proportionate” to achieving its aim of
21 curbing the pandemic’s spread, while preserving individual rights. See Stoto Decl. ¶¶ 30-34.

22 Plaintiffs offer no alternative, other than to suggest that requiring observance of the State’s
23 “health and hygiene guidelines as a less restrictive alternative,” ECF No. 18 at 31, ECF No. 39 at
24 16; but it is not clear what guidelines Plaintiffs are referencing. If they mean only masking and
25 physical distancing requirements, the State and County Defendants will be able to show that these
26 requirements reduce, but do not eliminate, the risk of spreading COVID-19 and thus do not fully
27 protect the interest of the State and County Defendants in slowing the spread of COVID-19.
28 Rutherford Decl. ¶¶ 60, 80, 84; Watt Decl. ¶ 50. Private gatherings pose a heightened risk of

1 transmission because such gatherings are generally social in nature, where participants are in
 2 close proximity, and involve personal interactions for an extended period of time. Rutherford
 3 Decl. ¶¶ 74-84. Moreover, unlike the houses of worship with 400- or 1000-person capacities at
 4 issue in *Cuomo*, private homes are generally not designed to accommodate physical distancing of
 5 larger groups and have only limited ventilation, factors that further heighten the risk of
 6 transmission.⁶ It should come as no surprise then that private gatherings have been reported to be
 7 one of the primary causes of COVID-19's spread.⁷ And the need for restrictions on physical
 8 interactions has only grown in recent weeks, as California has seen an astronomical rise in cases,
 9 and ICUs across the State are nearing or are at capacity. Indeed, the CDC director has warned the
 10 next few months are potentially "the most difficult in the public health history of this nation."⁸ If
 11 this Court finds that *Cuomo* requires strict scrutiny, it should afford the State and County
 12 Defendants an opportunity to present further evidence of narrow tailoring such that their orders
 13 satisfy such scrutiny.

14 **II. THE COUNTY'S ORDERS DO NOT IMPLICATE *ROMAN CATHOLIC***

15 When Plaintiffs sought preliminary relief on October 22, the County allowed up to 100
 16 people to gather indoors and up to 200 outdoors. ECF 18-1 (Dunn Decl.), Ex. 40. By November
 17 18, when the County filed its opposition, the State had placed the County in the "Purple" tier; as a
 18 result, State rules barred all indoor gatherings in the County and limited most outdoor gatherings
 19 to three households. *See* ECF 28 at 7:10-23. For all outdoor gatherings, the County separately
 20 imposed a limit of 100 people, though as a practical matter that restriction applied only to the

21 ⁶ A recent study showed that infections occur indoors after five minutes of exposure, even
 22 from 20 feet away. *See* Victoria Kim, "Infected After Five Minutes," LA Times, available at
 23 <https://www.latimes.com/world-nation/story/2020-12-09/five-minutes-from-20-feet-away-south-korean-study-shows-perils-of-indoor-dining-for-covid-19> (last accessed December 9, 2020).

24 ⁷ *See, e.g.,* Karin Brulliard, "At Dinner Parties and Game Nights, Casual American Life is
 25 Fueling the Coronavirus Surge As Daily Cases Exceed 150,000," Washington Post, November
 26 12, 2020, available at <https://www.washingtonpost.com/health/2020/11/12/covid-social-gatherings/> (last accessed December 9, 2020); *see also* CDPH, Gathering Guidelines, available at
 27 <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Guidance-for-the-Prevention-of-COVID-19-Transmission-for-Gatherings-November-2020.aspx> (last accessed December 9,
 28 2020) ("Gatherings that occur outdoors are significantly safer than indoor gatherings").

⁸ Will Feuer, "CDC Director Warns The Next Few Months 'Could Be the Most Difficult
 in the Public Health History of This Nation,'" CNBC (December 2, 2020), available at
<https://www.cnbc.com/2020/12/02/cdc-redfield-says-the-most-difficult-months-in-health-history-loom.html> (last accessed December 2, 2020).

1 limited gatherings (e.g., worship services) to which the State did not impose stricter limits. *Id.*
2 The rules have since changed twice: On November 30, the County retained the same gatherings-
3 based limits while imposing new 25% capacity limits on grocery stores and 10% limits on retail,
4 personal care services, and limited services like pet grooming. ECF 39-1 (Dunn Reply Decl.),
5 Ex. 3. Finally, on December 4, except for the 100-person limit (which still applies), the County
6 adopted the State Blueprint’s guidance on gatherings, which bars most indoor and outdoor
7 gatherings. Dunn Reply Decl., Ex. 10. The County also on December 4 limited all retail stores
8 to 20% and prohibited personal care and non-essential limited services. *Id.* The County issued its
9 December 4 order in anticipation of regional ICU capacity decreasing to 15%, the trigger the
10 State has announced for imposing stricter rules.⁹

11 The opinion in *Cuomo* does not apply to any of the County’s orders for three reasons. First,
12 the Supreme Court based that decision in part on evidence of “targeting” religious activity.
13 *Cuomo*, 2020 WL 6948354, at *1. As noted above, there is no such evidence of targeting by the
14 County in this case.

15 Second, the Court emphasized that the New York rules considered there “singled out
16 houses of worship for especially harsh treatment.” *Id.* Here, until December 4, the County’s
17 orders restricted all gatherings, regardless of religious or secular purpose. Since then, the County,
18 by adopting State rules, has continued to restrict most gatherings equally; to the extent the rules
19 now reference religion, it is by giving greater leeway to “worship services,” a distinction that
20 favors religion and which the State addresses above. Moreover, whereas New York’s 10- and 25-
21 person caps on church attendance differed strikingly from the loose or non-existent capacity
22 limits on businesses, the County currently imposes stringent capacity limits on the non-
23 comparable transient activities that are permitted: for example, retail is capped at 20% capacity.
24 Personal care services, on which Plaintiffs spend much of their brief (*see* Dkt. 39 at 7:6-14;

25 _____
26 ⁹ The County adopted stricter State rules before the State mandated their adoption because
27 its hospitalization rates were projected to reach the 15% threshold by mid-December and some
28 parts of the region already had less than 15% capacity. See <https://www.sccgov.org/sites/covid19/Pages/press-release-12-4-2020-new-regional-stay-at-home-order.aspx> (explaining reasons for early action).

1 13:13-23) are now closed, having previously been limited to 10% capacity, as are other indoor
2 activities including gyms, museums, restaurants, and bars. To the extent gatherings (religious or
3 secular) are regulated differently than other activities (religious or secular), it is because they
4 involve greater risk. *See* Cody Decl. ¶¶ 14, 28-29, 34-35, 37, 59; Maldonado Decl. ¶¶ 13, 16.
5 *Cuomo* did not address the risk profiles of different activities presumably because the Court
6 deemed the disparate treatment there to be extreme, but it certainly did not bar officials from
7 making distinctions based on the current scientific understanding of risk.

8 Third, unlike the plaintiffs in *Cuomo*, Plaintiffs have not established that the homes covered
9 by Defendants orders have an “admirable safety record.” *Cuomo*, 2020 WL 6948354, at *2.
10 They do not identify specific efforts they have taken to avoid spreading COVID-19, nor do they
11 describe the age, size, or ventilation systems of the homes in which they wish to gather. They
12 merely make vague promises to adhere to social distancing practices, which—particularly given
13 the currently high rate of community transmission in the County—are insufficient to stem the risk
14 and contrast significantly with the record in *Cuomo*.

15 Finally, contrary to Plaintiffs’ suggestion, the Supreme Court did not repudiate *Jacobson v.*
16 *Massachusetts*, 197 U.S. 11 (1905). The per curiam order declined to address the opinion at all
17 despite spirited debate between the dissenting and concurring opinions. The Court may have
18 concluded that the greater deference afforded by *Jacobson* (and by most lower courts considering
19 COVID orders) does not apply in cases with evidence of targeting and extremely disparate
20 treatment. At a minimum, however, the order embraced the proposition, rooted in *Jacobson*, that
21 members of the judiciary “are not public health experts, and [] should respect the judgement of
22 those with special expertise in this area.” *Cuomo*, 2020 WL 6948354, at *3. The health orders at
23 issue here present the type of discrimination-free decisions as to which Courts “should respect the
24 judgment” of health experts.

25 **III. THE LANDSCAPE OF CASES CHALLENGING COVID-RELATED RESTRICTIONS IN** 26 **THE NINTH CIRCUIT AND THE SUPREME COURT**

27 Attached to this brief is an exhibit describing the current cases concerning COVID-related
28 restrictions pending in the Ninth Circuit and before the Supreme Court. See Exhibit 1.

1 Dated: December 11, 2020

Respectfully submitted,

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10 IN THE UNITED STATES DISTRICT COURT
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<p>14 RITESH TANDON, et al.,</p> <p>15</p> <p style="text-align: center;">16 v.</p> <p>17</p> <p>18 GAVIN NEWSOM, et al.,</p> <p>19</p>	<p>5:20-cv-07108</p> <p>20 Plaintiffs,</p> <p>21 EXHIBIT 1 – CURRENT COVID-RELATED LITIGATION</p> <p>22 Defendants.</p>
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23 **NINTH CIRCUIT AND SUPREME COURT PENDING CASES**

Case	Summary	Procedural Posture	Status
<p>23 <i>Calvary Chapel Dayton Valley v. Sisolak</i></p> <p>24 Ninth Circuit: No. 20-16169</p> <p>25 Supreme Court: No. 20-639</p>	<p>23 Challenges to Nevada’s restrictions on in-person worship services.</p>	<p>23 Plaintiffs appealed the denial of preliminary injunction motion to the Ninth Circuit on June 30, 2020.</p> <p>24</p> <p>25 With the Ninth Circuit appeal still pending, plaintiffs petitioned for certiorari on November 5, 2020.</p>	<p>23 <u>Ninth Circuit:</u> Oral argument occurred on December 8, 2020.</p> <p>24</p> <p>25 <u>Supreme Court:</u> Opposition to the petition for certiorari was filed on December 10, 2020.</p>

<p>1 <i>Harvest Rock Church, Inc. v. Newsom</i> Ninth Circuit: No. 20-55907</p> <p>2</p> <p>3</p> <p>4</p> <p>5 Supreme Court: No. 20A94</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p>	<p>Challenges to California's restrictions on in-person worship services.</p>	<p>Plaintiffs appealed denial of PI motion to the Ninth Circuit on August 31, 2020.</p> <p>Plaintiffs filed for emergency relief with the Supreme Court. On December 3, the Supreme Court vacated district court's order and remanded to the Ninth Circuit for further consideration in light of <i>Roman Catholic Diocese</i>.</p> <p>On December 9, 2020, plaintiffs filed renewed application for emergency relief.</p>	<p><u>Supreme Court:</u> No response to plaintiff's renewed application for emergency relief has yet been requested.</p> <p><u>Ninth Circuit:</u> On December 3, 2020, the Ninth Circuit remanded to the District Court.</p>
<p>10 <i>South Bay United Pentecostal Church v. Newsom</i> Ninth Circuit: No. 20-55533</p> <p>11</p> <p>12</p> <p>13</p> <p>14 Supreme Court: No. 20-746</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Challenges to California's restrictions on in-person worship services.</p>	<p>Plaintiffs appealed denial of TRO application to the Ninth Circuit. On July 29, 2020, the Ninth Circuit remanded the interlocutory appeal for the limited consideration of TRO application in light of recent events and case law. District court denied the renewed TRO application on October 15, 2020.</p> <p>On November 24, 2020, plaintiffs petitioned for certiorari before judgment concerning the District Court's October 15, 2020 ruling denying the renewed TRO application.</p> <p>On December 8, Ninth Circuit vacated the district court's October 15, 2020 TRO denial and remanded to district court for further consideration in light of <i>Roman Catholic Diocese</i>.</p> <p>On December 9, 2020, plaintiffs filed renewed application for emergency injunctive relief.</p>	<p><u>District Court:</u> Hearing on injunction pending appeal set for December 18, 2020.</p> <p><u>Supreme Court:</u> Opposition to petition for certiorari to be filed by December 30, 2020.</p> <p>No response to the renewed application for emergency relief has yet been requested..</p>
<p>26 <i>Robinson v. Murphy</i> Third Circuit: No. 20-3048</p> <p>27</p> <p>28</p>	<p>Challenges to New Jersey's restrictions on in-person</p>	<p>Plaintiffs appealed denial of TRO application to the Third Circuit.</p>	<p><u>Supreme Court:</u> No decision on the application for</p>

1	Supreme Court: No. 20A95	worship services and mask mandate.	On November 25, plaintiffs filed an application for injunctive relief in the Supreme Court. Defendants filed their response on December 3, and plaintiffs filed their reply on December 4.	injunctive relief has yet been issued.
2	<i>Dayton Christian Valley and Commonwealth of Kentucky v. Beshear</i> Sixth Circuit: No. 20-6341	Free Exercise challenge to Kentucky's school closures, including religious schools	Preliminary injunction issued in Eastern District of Kentucky. On November 29, 2020, the Sixth Circuit stayed District Court's injunction. On December 1, 2020, plaintiffs filed an application to vacate stay in the Supreme Court. On December 4, 2020, defendants filed their response.	<u>Supreme Court:</u> No decision on the application to vacate Sixth Circuit stay has yet been issued.
3	Supreme Court: No. 20A96			
4	<i>Slatery v. Adams & Boyle, P.C.</i> Sixth Circuit: No. 20-5408	Due Process challenge to Tennessee's requirement that abortions be postponed	District of Tennessee granted plaintiff's TRO application as applied to procedural abortions on April 17, 2020. The Sixth Circuit affirmed on April 24, 2020. On October 8, 2020, state defendants petitioned for certiorari.	<u>Supreme Court:</u> Opposition to writ petition is due December 14, 2020.
5	Supreme Court: No. 20-482			
6	<i>High Plains Harvest Church v. Polis</i> Tenth Circuit: No. 20-1280	Free Exercise challenge to Colorado's restrictions on in-person worship.	Plaintiffs appealed preliminary injunction motion denial to the Tenth Circuit. On December 4, plaintiffs filed an application for injunctive relief in the Supreme Court; defendants filed response on December 9.	<u>Supreme Court:</u> No decision on the application for injunctive relief has yet been issued.
7	Supreme Court: No. 20A105			
8	<i>Best Supplement Guide, LLC v. Newsom</i> Ninth Circuit: No. 20-17362	Challenges to California and San Joaquin's orders restricting gyms.	On October 27, 2020, the Eastern District of California granted defendants' motion to dismiss. On December 3, 2020, plaintiffs appealed to the Ninth Circuit.	<u>Ninth Circuit:</u> Opening brief is due March 12, 2021, and response brief is due April 12, 2021.
9	<i>Givens v. Newsom</i> Ninth Circuit: No. 20-15949	First Amendment challenges to California's restrictions on rallies	Plaintiffs appealed denial of TRO application to the Ninth Circuit on May 17, 2020, and oral argument was held on November 17, 2020.	<u>Ninth Circuit:</u> On December 4, 2020, the Ninth Circuit dismissed the appeal of the TRO denial.

1	<i>Gish v. Newsom</i> Ninth Circuit: No. 20-55445	Challenges to California's restrictions on in-person worship services.	On April 27, Plaintiffs appealed denial of preliminary injunction motion to the Ninth Circuit. District court granted defendants' motion to dismiss with leave to amend. Defendants filed unopposed motion for entry of judgment in October 21, 2020.	<u>Ninth Circuit:</u> Case removed from calendar; no further action expected until District Court enters judgment.
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6	<i>Alexander v. City of San Mateo</i> Ninth Circuit: No. 20-17189	Challenges to San Mateo's mask requirements	On November 6, 2020, Plaintiffs appealed the denial of TRO application to the Ninth Circuit.	<u>Ninth Circuit:</u> Opening brief due January 4, 2021, and response brief due February 2, 2021.
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9	<i>McDougall v. County of Ventura</i> Ninth Circuit: No. 20-56220	Second Amendment challenge to Ventura's orders which closed retail, including gun stores.	Plaintiffs appealed order granting motion to dismiss to the Ninth Circuit on November 19, 2020.	<u>Ninth Circuit:</u> Opening brief due January 19, 2021, and response brief due February 18, 2021.
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14	<i>Apartment Association of Los Angeles County v. County of Los Angeles</i> Ninth Circuit: No. 56251	Challenges to Los Angeles County's eviction moratorium on residential and commercial tenants.	Plaintiffs appealed denial of preliminary injunction motion to the Ninth Circuit on November 25, 2020.	<u>Ninth Circuit:</u> Opening brief due December 23, 2020, and response brief due January 20, 2021.
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18	<i>Brach v. Newsom</i> Ninth Circuit: No. 20-56291	Challenges to K-12 school closures.	Plaintiffs appealed sua sponte summary judgment order.	<u>Ninth Circuit:</u> Opening brief due March 13, 2021, and response brief due April 13, 2021.
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1 Dated: December 11, 2020

Respectfully submitted,

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