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* *Pro hac vice* motions submitted herewith

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

Cross Culture Christian Center, and **Pastor Jonathan Duncan**,

Plaintiffs,

v.

Gavin Newsom, in his official capacity as Governor of California; **Xavier Becerra**, in his official capacity as the Attorney General of California; **Sonia Angell**, in her official capacity as California Public Health Officer; **Maggie Park**, in her official capacity as Public Health Officer of San Joaquin County; **Marcia Cunningham**, in her official capacity as Director of Emergency Services, San Joaquin County; **City of Lodi**; **Tod Patterson**, in his official capacity as Chief of Police of Lodi,

Defendants.

Case No. 2:20-cv-832-JAM-CKD

Brief of *Amicus Curiae* Americans United for Separation of Church and State in Opposition to Plaintiffs' *Ex Parte* Motion for Temporary Restraining Order

Hon. John A. Mendez

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INTEREST OF *AMICUS CURIAE*

Americans United for Separation of Church and State is a national, nonsectarian public-interest organization that is committed to preserving the constitutional principles of religious freedom and the separation of religion and government. Americans United has long fought to uphold the guarantees of the First Amendment's Religion Clauses that government must not favor, disfavor, or punish based on religion or belief, and therefore that religious accommodations must not license maltreatment of, or otherwise detrimentally affect, third parties.

INTRODUCTION AND SUMMARY OF ARGUMENT

California, along with most of the rest of the world, is facing a pandemic. The United States now has the most reported COVID-19-related deaths worldwide (*see* Associated Press, *20,000: US Death Toll Overtakes Italy's as Midwest Braces* (Apr. 11, 2020), https://bit.ly/2YcRDXJ), and the number of cases and the death toll in California are still climbing (Diya Chacko, *Coronavirus Today: The threat of a second wave*, L.A. TIMES (Apr. 22, 2020, 8:08 PM), https://lat.ms/2RYYOPl). This once-in-a-lifetime public-health threat demanded decisive action from leaders at all levels of government to protect their constituents' lives, and the evidence shows that early responses across California likely blunted the virus's damage. Rong-Gong Lin II, et al., *Social distancing may have helped California slow the virus and avoid New York's fate*, L.A TIMES (Mar. 31, 2020, 5:00 AM), https://lat.ms/2VSbYih. Weakening these restrictions now risks reversing that success and sparking a second wave of the virus. *See* Chacko, *The threat of a second wave*, *supra*.

As part of a statewide emergency public-health response, the State of California and San Joaquin County have issued orders barring all in-person gatherings to reduce the risk of transmission. Though these orders have the effect of limiting some of Cross Culture Christian Center's religious activities, the orders do not violate Cross Culture's religious-exercise rights. The Supreme Court explained in *Employment Division v. Smith*, 494 U.S. 872 (1990), and *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993), that neutral, generally applicable laws reflecting no discriminatory intent toward religion do not violate the Free Exercise

Clause of the First Amendment. The challenged orders comply with this principle: The virus is just as likely to spread at religious events as at nonreligious ones, so the orders apply to all gatherings equally, regardless of motivation.

Cross Culture's attempt to recast its religious-exercise challenge under the Religious Land Use and Institutionalized Persons Act meets the same fate because none of the challenged orders are land-use regulations covered by the Act. But even if the Court were to conclude that heightened scrutiny should apply, the orders would still survive because they are narrowly tailored to advance the compelling governmental interest in protecting residents from a deadly disease.

What is more, the Establishment Clause of the First Amendment forbids granting an exemption from the orders for religious services. For if government imposes harms on third parties when it exempts religious exercise from the requirements of the law, it impermissibly favors the benefited religion and its adherents over the rights, interests, and beliefs of the nonbeneficiaries. *See, e.g.*, *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 709–10 (1985). Holding that religious gatherings must be exempted from the California and County public-health orders would do just that. A single contagious person at a church can infect scores of fellow congregants, who may then expose family, friends, and strangers, including countless people who did not attend the service.

For reasons similar to those set forth here, many courts have rejected in recent weeks challenges like this one to COVID-19-related public-health orders, including courts in the Central and Southern Districts of California. *See Gish v. Newsom*, No. 5:20-cv-00755, 2020 WL 1979970 (C.D. Cal. Apr. 23, 2020) (denying TRO), *appeal filed* (Apr. 28, 2020); *Abiding Place Ministries v. Wooten*, No. 3:20-cv-00683-BAS-AHG, ECF No. 7 (S.D. Cal. Apr. 10, 2020) (denying TRO); *Maryville Baptist Church, Inc. v. Beshear*, __ F. Supp. 3d __, No. 3:20-cv-278-DJH, 2020 WL 1909616 (W.D. Ky. Apr. 18, 2020) (denying TRO), *appeal docketed*, No. 20-5427 (6th Cir. Apr. 27, 2020); *Legacy Church, Inc. v. Kunkel*, __ F. Supp. 3d __, No. 1:20-cv-327-JB-SCY, 2020 WL 1905586 (D.N.M. Apr. 17, 2020) (denying TRO in 100-page opinion); *Davis v. Berke*, No. 1:20-cv-98, 2020 WL 1970712 (E.D. Tenn. Apr. 17, 2020) (denying TRO); *Tolle v. Northam*, No. 1:20-cv-00363-LMB-MSN, 2020 WL 1955281 (E.D. Va. Apr. 8, 2020) (reaffirming and further

explaining legal basis for preliminary injunction), *appeal docketed*, No. 20-1419 (4th Cir. Apr. 13, 2020); *Nigen v. New York*, No. 1:20-cv-01576-EK-PK, 2020 WL 1950775 (E.D.N.Y. Mar. 29, 2020) (denying TRO); *Hotze v. Hidalgo*, No. 2020-22609 (Tex. Dist. Ct. Apr. 13, 2020) (denying TRO); *Binford v. Sununu*, No. 217-2020-CV-00152 (N.H. Super. Ct. Mar. 25, 2020) (denying preliminary injunction); Matthew Barakat, *Judge rejects lawsuit over order; no religious exemption*, WASH. POST (Apr. 9, 2020), https://wapo.st/2xiqeIE (reporting denial of TRO by state judge in Virginia); *see also Friends of Danny DeVito v. Wolf*, __ A.3d __, No. 68 MM 2020, 2020 WL 1847100, at *1 (Pa. Apr. 13, 2020) (rejecting First Amendment and other constitutional challenges by non-life-sustaining businesses). This Court should do the same.

ARGUMENT

I. The orders do not violate Cross Culture's religious-exercise rights.

A. The orders do not trigger heightened scrutiny under the Free Exercise Clause.

It is natural that, in difficult and scary times like these, people will desire the comfort and support that their faith community provides. The freedom to worship in accordance with one's spiritual practices and traditions is a right of the highest order, but the constitutional guarantee of religious freedom has never provided absolute license to engage in conduct consistent with one's religious beliefs. *E.g.*, *Braunfeld v. Brown*, 366 U.S. 599, 603 (1961) (plurality opinion). Yet Cross Culture argues here that the Free Exercise Clause prohibits temporary limitations on religious gatherings even in the face of a severe global pandemic. That claim is legally insupportable: "The right to practice religion freely does not include liberty to expose the community . . . to communicable disease." *Prince v. Massachusetts*, 321 U.S. 158, 166–67 (1944).

Though government cannot forbid a religious practice *because it is religious*, religion-based disagreement with the law does not excuse noncompliance. "To permit this would be to make the professed doctrines of religious belief superior to the law of the land," which would "in effect . . . permit every citizen to become a law unto himself." *Smith*, 494 U.S. at 879 (quoting *Reynolds v. United States*, 98 U.S. 145, 166–67 (1879)). Rather, laws that burden religious conduct are constitutionally permissible—and need satisfy rational-basis review only—when they are

neutral toward religion and apply generally. *Lukumi*, 508 U.S. at 531; *Smith*, 494 U.S. at 879. The challenged orders here satisfy these requirements.

1. The orders are neutral toward religion.

The neutrality requirement means that a law must not "infringe upon or restrict practices *because of* their religious motivation." *Lukumi*, 508 U.S. at 533 (emphasis added). That prohibition bars discrimination against religion both facially and through "religious gerrymanders" that target specific religious conduct. *Id.* at 534. The orders here evince no hostility toward religion. They facially prevent all gatherings—religious, social, recreational, or otherwise. Compl. Ex. 1, ECF No. 1-1 (instructing people to stay at home except for essential critical-infrastructure activities); Ex. 5, ECF No. 1-5, ¶ 6 (prohibiting all gatherings except for limited essential activities). That is precisely the sort of incidental burden on religion in service of legitimate governmental aims that *Smith* and *Lukumi* make clear does not offend the Free Exercise Clause.

The County's April 3 enforcement order does not change this analysis. Cross Culture argues that the County, by enforcing the California and County stay-at-home orders against it after it openly refused to comply, impermissibly "targeted" its religious conduct. Pls.' Mot. TRO, at 11–12. But the April 3 order makes clear that Cross Culture became the subject of an enforcement action because of *its violation of the law*, not the religious nature of its conduct. Compl. Ex. 4, ECF No. 1-4 ("Cross Culture Community Church was aware of the County [stay-at-home] Order and intended to continue to meet in violation of the Order."). Enforcement of *any* law requires individualized action against violators, and Cross Culture has not demonstrated any differential treatment of religion in the County's enforcement practices.

2. The orders are generally applicable.

General applicability is closely related to neutrality. *Lukumi*, 508 U.S. at 531. It means that government, "in pursuit of legitimate interests, cannot in a selective manner impose burdens only on conduct motivated by religious belief." *Id.* at 543. In other words, government cannot restrict religious conduct while allowing substantial comparable "nonreligious conduct that endangers [the asserted governmental] interests in a similar or greater degree." *Id.* The challenged orders generally

prohibit gatherings of all kinds and therefore plainly do not pursue the government's interests "*only* against conduct with a religious motivation." *See Lukumi*, 508 U.S. at 546 (emphasis added).

That the orders contain some exemptions for institutions such as healthcare providers and grocery stores (*see* Compl. Ex. 5 ¶ 5) does not negate their general applicability. Because "[a]ll laws are selective to some extent," they need not be universal to be generally applicable. *See Lukumi*, 508 U.S. at 542–43. Copyright law, for example, contains several categorical exemptions (*see* 17 U.S.C. §§ 107–122), but no one understands those carve-outs to create a constitutional right to an exemption for religiously motivated violations of copyright. Rather, the fundamental question is whether the scope of a law's coverage demonstrates animus toward religious conduct by subjecting it to burdens not placed on a significant swath of analogous nonreligious conduct. *See Lukumi*, 508 U.S. at 542–46 (explaining that city ordinances ostensibly aimed at protecting public health and preventing animal cruelty worked exclusively to bar Santeria religious animal sacrifice while leaving other animal slaughter unaffected).

Comparing similarly situated activities is key to sniffing out religious discrimination. *Cf. Attorney General William P. Barr Issues Statement on Religious Practice and Social Distancing*, United States Department of Justice (Apr. 14, 2020), https://bit.ly/2RIYzHO (urging that religious gatherings be treated like similar nonreligious gatherings, such as those at movie theaters, restaurants, and concert halls). A typical in-person religious service could have dozens—or even hundreds—of people sitting together in a room for an extended period, speaking to one another or singing at various points. The challenged orders apply equally to analogous nonreligious gatherings at parades, social clubs, art shows, movie screenings, political conferences, educational lectures, restaurant dining rooms, and other events and venues. *See* Compl. Ex. 5 ¶ 6. They do not single out religious gatherings for prohibition while permitting similar nonreligious gatherings.

Moreover, the orders draw no distinctions based on religious views or motivations with respect to exempt activities and locations. Healthcare providers, for example, are not subject to the restrictions, whether or not they have a religious affiliation. *See* Compl. Ex. 5 ¶ 5; *cf. Ungar v. N.Y.C. Hous. Auth.*, 363 F. App'x 53, 56 (2d Cir. 2010) (holding that limited categorical exceptions

to public-housing policy did not negate general applicability because exceptions were equally available to religious and nonreligious applicants).

Moreover, the exemptions in the orders do not undermine the governmental interests—public health and safety—that the orders are intended to further. *See Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1134–35 (9th Cir. 2009) (exemptions that directly or indirectly further government's interest do not negate general applicability). People are allowed to leave home to maintain designated critical infrastructure, for example, because it is "importan[t] . . . to Californians' health and well-being" to preserve access to things like food, prescriptions, and healthcare. Compl. Ex. 1, ECF No. 1-1. Indeed, to ban healthcare workers from working together would be directly contrary to the orders' aim to protect the lives and health of Californians. And allowing people to leave home to care for others who cannot care for themselves (Compl. Ex. 5 ¶ 11.d.ii) likewise furthers the state interest in public health. If in combating the virus governmental bodies were to close down grocery stores, pharmacies, healthcare services, emergency services, utility providers, supply chains, and other activities deemed essential to health and security (*see* Compl. Ex. 5 ¶ 5 (incorporating essential critical infrastructure order of the State Public Health Officer)), that would only harm public health and safety and the efforts to control COVID-19.

B. The Religious Land Use And Institutionalized Persons Act does not apply.

The Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc, provides that government cannot substantially burden religious exercise through "land use regulation[s]" unless it satisfies a compelling-interest test. The Act defines "land use regulation" as "a zoning or landmarking law, or the application of such a law." 42 U.S.C. § 2000cc-5(5). The California and County orders at issue here are not zoning or landmarking laws; they regulate whether and under what circumstances people may leave their homes and gather, not the purposes for which land may be used. Hence, Cross Culture's RLUIPA claim should fail as a matter of law.

C. The orders satisfy the compelling-interest test.

Even if the Court were to conclude that the challenged orders must satisfy heightened scrutiny under the Free Exercise Clause or the Act, they would still be lawful, because they are

narrowly tailored to achieve a compelling governmental interest. *See Lukumi*, 508 U.S. at 531. Indeed, more than a century of constitutional jurisprudence demonstrates that restrictions on religious exercise tailored to containing contagious diseases withstand the strictest judicial scrutiny.

Before its decision in *Smith* in 1990, the Supreme Court interpreted the Free Exercise Clause to require application of a compelling-interest test whenever religious exercise was substantially burdened by governmental action. *See, e.g.*, *Sherbert v. Verner*, 374 U.S. 398, 407 (1963); *see also* 42 U.S.C. § 2000bb(b) (purpose of federal Religious Freedom Restoration Act was "to restore the compelling interest test as set forth in" *Sherbert* and *Wisconsin v. Yoder*, 406 U.S. 205 (1972)). The Court's pre-*Smith* free-exercise decisions made clear that the test, while exacting, is not "fatal in fact" (*Grutter v. Bollinger*, 539 U.S. 306, 326–27 (2003)). And those decisions routinely acknowledged that there is no right to religious exemptions from laws tailored to shield the public from serious disease.

1. The orders serve a compelling governmental interest.

The government has a compelling interest in protecting the health and safety of the public in general and in preventing the spread of infectious diseases in particular. *See Sherbert*, 374 U.S. at 402–03; *accord Yoder*, 406 U.S. at 230 & n.20; *Am. Life League, Inc. v. Reno*, 47 F.3d 642, 655–56 (4th Cir. 1995). Indeed, an extensive body of case law reflects the overriding importance of the governmental interest in combating communicable diseases.

"[P]owers on the subject of health and quarantine [have been] exercised by the states from the beginning." *Compagnie Francaise de Navigation a Vapeur v. La. Bd. of Health*, 186 U.S. 380, 396–97 (1902). On that basis, more than a century ago, the Supreme Court upheld a mandatory-vaccination law aimed at stopping the spread of smallpox. *See Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905). The Court straightforwardly rejected the idea that the Constitution barred compulsory measures to protect health, citing the "fundamental principle" that personal liberty is subject to restraint "in order to secure the . . . health . . . of the state." *Id.* at 26 (quoting *Hannibal & St. Joseph R.R. Co. v. Husen*, 95 U.S. 465, 471 (1877)). Because "a community has the right to

protect itself against an epidemic of disease which threatens the safety of its members," individual rights are subject to reasonable restrictions—especially during a public-health emergency such as the one that we now face. *See Jacobson*, 197 U.S. at 27.

The Supreme Court has thus repeatedly reaffirmed that public-health regulations that burden religious exercise withstand heightened judicial scrutiny. *See Sherbert*, 374 U.S. at 402–03 (citing mandatory vaccinations in *Jacobson* as example of burden on religion that is permissible under compelling-interest test); *Yoder*, 406 U.S. at 230; *see also Prince*, 321 U.S. at 166–67. Lower federal courts have also consistently recognized that the governmental interest in preventing the spread of communicable disease is compelling. *See, e.g.*, *Workman v. Mingo Cty. Bd. of Educ.*, 419 F. App'x 348, 353–54 (4th Cir. 2011) ("[T]he state's wish to prevent the spread of communicable diseases clearly constitutes a compelling interest."); *McCormick v. Stalder*, 105 F.3d 1059, 1061 (4th Cir. 1997) ("[T]he prison's interest in preventing the spread of tuberculosis, a highly contagious and deadly disease, is compelling."); *Whitlow v. California*, 203 F. Supp. 3d 1079, 1089–90 (S.D. Cal. 2016) (collecting cases showing compelling governmental interest in fighting spread of contagious diseases). The governmental interest here in stanching the spread of COVID-19 is no less compelling. And it more than justifies placing limitations on all gatherings, including religious ones.

2. The orders are narrowly tailored.

The compelling-interest test requires that the challenged law be narrowly tailored to the interest at stake. *E.g.*, *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607 (1982). Even "[a] complete ban can be narrowly tailored . . . if each activity within the proscription's scope is . . . appropriately targeted." *Frisby v. Schultz*, 487 U.S. 474, 487 (1988); s*ee Roberts v. U.S. Jaycees*, 468 U.S. 609, 628–29 (1984) (ban on all gender discrimination is narrowly tailored to combating evil of gender discrimination). Accordingly, the Supreme Court (*see Sherbert*, 374 U.S. at 403 (citing *Jacobson*, 197 U.S. at 26–27)) and many other courts (*see, e.g.*, *Whitlow*, 203 F. Supp. 3d at 1089–90 (collecting cases)) have concluded that blanket prohibitions on refusing immunizations satisfy a compelling-interest standard.

The challenged orders here operate in the same way. No vaccine for COVID-19 yet exists, so the only way to slow its spread is to limit the number of opportunities for person-to-person transmission. Temporarily restricting in-person gatherings is how California and the County achieve that critical objective. And because it is unclear who is infected at any given time, the orders are no broader than necessary to ensure that the targeted activities—physical gatherings that create opportunities for transmission of the virus—are curtailed.

II. The Establishment Clause forbids the requested exemption.

The rights to believe, or not, and to practice one's faith, or not, are sacrosanct. But they do not extend to imposing costs and burdens of one's beliefs on others. The First Amendment's Religion Clauses "mandate[ ] governmental neutrality between religion and religion, and between religion and nonreligion." *McCreary County v. ACLU of Ky.*, 545 U.S. 844, 860 (2005) (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968)). That neutrality requirement not only forbids government to target religion for worse treatment (*see* Part I.A, *supra*) but also prohibits granting religious exemptions that would detrimentally affect nonbeneficiaries (*see Estate of Thornton*, 472 U.S. at 709–10). For when government purports to accommodate the religious exercise of some by shifting costs or burdens to others, it prefers the religion of the benefited over the rights, beliefs, and interests of nonbeneficiaries, in violation of the Establishment Clause. Exempting Cross Culture from the orders would contravene this settled constitutional rule.

a. In *Estate of Thornton*, for example, the U.S. Supreme Court invalidated a law requiring employers to accommodate Sabbatarians in all instances, because "the statute t[ook] no account of the convenience or interests of the employer or those of other employees who do not observe a Sabbath." 472 U.S. at 709–10. The Court held that "unyielding weighting in favor of Sabbath observers over all other interests" has "a primary effect that impermissibly advances a particular religious practice," violating the Establishment Clause. *Id.* at 710. Similarly, in *Texas Monthly, Inc. v. Bullock*, the Court invalidated a sales-tax exemption for religious periodicals because, among other defects, it unconstitutionally "burden[ed] nonbeneficiaries" by making them pay "to

offset the benefit bestowed on subscribers to religious publications." 489 U.S. 1, 18 n.8 (1989) (plurality opinion).

The Supreme Court's pre-*Smith* Free Exercise Clause jurisprudence is consistent, demonstrating that religious exemptions that harm others cannot be required even under the compelling-interest test. In *United States v. Lee*, the Court rejected an Amish employer's request for an exemption from paying social-security taxes because the exemption would have "operate[d] to impose the employer's religious faith on the employees." 455 U.S. 252, 261 (1982). In *Braunfeld*, the Court declined to grant an exemption from Sunday-closing laws because it would have provided Jewish businesses with "an economic advantage over their competitors who must remain closed on that day." 366 U.S. at 608–09. And in *Prince*, the Court denied a request for an exemption from child-labor laws to allow minors to distribute religious literature because while "[p]arents may be free to become martyrs themselves . . . it does not follow [that] they are free . . . to make martyrs of their children." 321 U.S. at 170. That is because "[r]eal liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own [liberty] . . . regardless of the injury that may be done to others." *Jacobson*, 197 U.S. at 26.

In short, a religious accommodation "must be measured so that it does not override other significant interests" (*Cutter v. Wilkinson*, 544 U.S. 709, 722 (2005)) and must not "impose substantial burdens on nonbeneficiaries" (*Texas Monthly*, 489 U.S. at 18 n.8 (plurality opinion)). When nonbeneficiaries would be detrimentally affected, religious exemptions are forbidden. *Cutter*, 544 U.S. at 720; *Estate of Thornton*, 472 U.S. at 709–10.

b. In only one narrow set of circumstances (in two cases) has the U.S. Supreme Court ever upheld religious exemptions that materially burdened third parties—namely, when core Establishment and Free Exercise Clause protections for the ecclesiastical authority of religious institutions required the exemption. In *Hosanna-Tabor Lutheran Evangelical Church & School v. EEOC*, 565 U.S. 171, 194–95 (2012), the Court held that the Americans with Disabilities Act could not be enforced in a way that would interfere with a church's selection of its ministers. And in

Corporation of the Presiding Bishop v. Amos, 483 U.S. 327, 339–40 (1987), the Court upheld, under Title VII's statutory religious exemption, a church's firing of an employee who was not in religious good standing. These exemptions did not amount to impermissible religious favoritism, and therefore were permissible under the Establishment Clause, because they directly implicated "church autonomy." *Real Alts., Inc. v. Sec'y Dep't of Health & Human Servs.*, 867 F.3d 338, 352 (3d Cir. 2017).

This case does not implicate these special protections for ecclesiastical authority because it does not present questions regarding internal matters such as hiring clergy or determining religious membership. Rather, it presents the opposite question: whether there is a constitutional right to put countless people *outside* the church at greater risk of exposure to deadly disease.

c. Granting an exemption to Cross Culture here would elevate its religious preferences over the health of the entire community. By holding religious gatherings, Cross Culture not only would put its members in danger but also would increase the risk of contagion for everyone with whom they come into contact, including children, the elderly, and others at the highest risk of severe illness.

California is facing an unprecedented public-health emergency. In response to this grave threat, state and local officials have restricted people's ability to leave home and gather with others. Elected leaders have determined that these steps will slow the spread of the virus and ultimately save lives.

If California and the County are instead forced to exempt Cross Culture—and therefore also all other houses of worship that want exemptions—everyone will be in greater danger of contracting the virus. Yet religious gatherings are just as likely as any other gatherings to spread COVID-19, and the examples are sadly piling up across the country. Officials in Sacramento County, for example, traced roughly a third of that County's first several hundred cases back to church gatherings. Hilda Flores, *One-third of COVID-19 cases in Sac County tied to church gatherings, officials say*, KCRA (Apr. 1, 2020, 2:55 PM), https://bit.ly/2XlCpPu. Seventy-one cases were tied to one Sacramento church alone. Tony Bizjak, et al., *71 infected with coronavirus*

at Sacramento church. Congregation tells county 'leave us alone,' SACRAMENTO BEE (Apr. 2, 2020), https://bit.ly/2yOL4jk. After a church-choir practice—at which members attempted to observe social-distancing and hygiene guidance—45 out of 60 attendees fell ill, and two tragically died. Richard Read, *A choir decided to go ahead with rehearsal; Now dozens of members have COVID-19 and two are dead*, L.A. TIMES (Mar. 29, 2020), https://lat.ms/2yiLbU6. And a church event in Louisville last month has been "linked to at least 28 cases . . . and two deaths." Bailey Loosemore & Mandy McLaren, *Kentucky county 'hit really, really hard' by church revival that spread deadly COVID-19*, LOUISVILLE COURIER JOURNAL (updated Apr. 2, 2020), https://bit.ly/2XkKCnd.

A single unwitting carrier in Cross Culture's congregation could cause a ripple effect throughout the entire community: That one carrier might pass the virus to his neighbors in the pews, who might then return home and pass it to their family members, including people at high risk of severe illness. If those infected family members then go to the doctor's office, or to the grocery store for milk, they may potentially expose others, who may then do the same to their families—and so on. And the more people who get sick, the more strain is placed on the hospital system—and the greater the chance that people die due to lack of healthcare resources. The Establishment Clause forbids government to grant religious exemptions for conduct that threatens to harm so many.

CONCLUSION

For the foregoing reasons, the Court should deny Cross Culture's request for injunctive relief.

Respectfully submitted,

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