

No. 20-639

Supreme Court of the United States

CALVARY CHAPEL DAYTON VALLEY,

Petitioner,

v.

STEVE SISOLAK *ET AL.*,

Respondents.

**On Petition for a Writ of Certiorari before Judgment
to the United States Court of Appeals
for the Ninth Circuit**

**Brief of *amici curiae* the Ethics and Religious
Liberty Commission, National Association
of Evangelicals, and the Lutheran Church—
Missouri Synod in support of Petitioner**

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INTEREST OF *AMICI CURIAE*¹

The Ethics and Religious Liberty Commission (“ERLC”) is the public policy arm of the nation’s largest Protestant denomination—the Southern Baptist Convention (“SBC”)—which is comprised of more than 46,000 autonomous churches and nearly 16 million members. The ERLC is charged by the SBC, its member churches, and their congregants, with engaging the culture and speaking to issues in the public square for the protection of religious liberty and human flourishing. Religious freedom is a bedrock indispensable value for Southern Baptists, as are the values of religious toleration, free association, and the free exercise of religion.

The National Association of Evangelicals (“NAE”) is the largest network of evangelical churches, colleges, denominations, and independent ministries in the United States. It represents more than 45,000 local churches and serves 40 member denominations, as well as numerous evangelical associations, missions, social-service providers, colleges, seminaries, religious publishers, and independent churches. NAE serves as the voice of evangelical churches, as well as other church-related and independent religious ministries. It believes that religious freedom is a God-given right and limitation on civil government.

¹ The parties’ counsel were timely notified of the filing of this brief and either consented to or did not oppose it. Neither a party nor its counsel authored this brief in whole or in part. No person or entity, other than *amici curiae* or their counsel, made a monetary contribution to the preparation and submission of this brief.

The Lutheran Church—Missouri Synod (“LCMS”) is an international Lutheran denomination with over 6,000 congregations and 2 million baptized members throughout the United States. In addition to numerous Synod-wide related entities, its ministry includes two seminaries, eight universities, the largest Protestant parochial school system in the country, and hundreds of recognized service organizations operating a variety of charitable nonprofit corporations.

Together, *amici* speak on behalf of their Convention, denomination, and members, which, in Nevada, include nearly 200 Southern Baptist churches, 24 LCMS member congregations, and scores of other evangelical Protestant churches that, collectively, are attended by thousands of Nevadans. *Amici* fear the restrictions at issue in this proceeding threaten the long-standing principle that the State may not single out religious believers and entities for the imposition of disparate burdens and restrictions that are not imposed on all other similarly-situated individuals and entities.

SUMMARY OF THE ARGUMENT

The health threat posed by the COVID-19 pandemic is significant, and public health measures designed to slow or prevent its spread are legitimate and necessary. Thankfully, the majority of States and local governments have imposed such measures in rational and even-handed ways. Some outliers, however, including the Emergency Directives challenged by the Petitioner here, have singled out religious individuals and entities for discriminatory treatment that burdens their religious exercise. Such treatment violates this Court's well-established precedent and, perversely, tends to undermine public confidence in, and compliance with, legitimate public health measures.

This Court's intervention is warranted prior to judgment below. The challenged Emergency Directives impose an immediate and ongoing harm not only to religious exercise but also to the financial viability of houses of worship and their ability to provide vital services to their congregants and adjacent communities. Further, expedited consideration of Petitioner's claims is needed lest the harm stretch on for many more months, and lest Petitioner's claim be mooted by the passage of time or by some future eve-of-judgment backpedaling by Respondents. As justice delayed is justice denied, so too free exercise delayed is free exercise denied. This Court should grant certiorari before judgment.

ARGUMENT

I. The Emergency Directives encumber religious exercise with a discriminatory burden that grows more crushing with the passage of time.

Reasonable public health measures designed to slow or halt the spread of COVID-19 are necessary and legitimate. Such measures, however, may not impose discriminatory or disproportionate burdens on religious exercise as compared to non-religious activities. Under the heightened standard of this Court’s jurisprudence, the imposition of such burdens is unconstitutional. See *Roman Catholic Diocese of Brooklyn v. Cuomo*, No. 20A87, 2020 WL 6948354, at *1 (U.S. Nov. 25, 2020) (enjoining enforcement of regulations that “violate ‘the minimum requirement of neutrality’ to religion”) (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U. S. 520, 533 (1993)); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2019 (2017) (“The Free Exercise Clause ‘protect[s] religious observers against unequal treatment’ and subjects to the strictest scrutiny laws that target the religious for ‘special disabilities’ based on their ‘religious status.’”) (quoting *Lukumi*, 508 U.S. at 533, 542); *Emp’t Div., Dep’t of Human Res. of Or. v. Smith*, 494 U.S. 872, 877–78 (1990) (“It would doubtless be unconstitutional” to ban activities undertaken “for worship purposes.”) (citation omitted).

The challenged Emergency Directives do exactly what this Court has forbidden, by burdening religious worship in ways not shared by similarly situated non-religious activities, and by hindering the operations and vital ministries of churches in ways not imposed on secular entities.

A. *Emergency Directives 021 and 033 burden religious exercise.*

The hallmark of a burden on one’s free exercise of religion is governmental pressure to abandon one’s religious convictions. See *Wisconsin v. Yoder*, 406 U.S. 205, 217–18 (1972); *Sherbert v. Verner*, 374 U.S. 398, 404 (1963); see also *Thomas v. Review Bd. of Indiana Empl. Sec. Div.*, 450 U.S. 707, 717–18 (1981). Emergency Directives 021 and 033 impose such pressure on Nevadans who, like Petitioner and the churches and congregants represented by *amici*,² are compelled by their faith to assemble in corporate religious worship.

Gathered religious worship is a crucial component of Baptist, Lutheran, and evangelical belief. See, e.g., *Hebrews* 10:24–25 (“And let us consider how we may spur one another on toward love and good deeds, *not giving up meeting together*, as some are in the habit of doing, but encouraging one another.”) (emphasis added); see also *Baptist Faith & Message 2000*, art. VIII (“The first day of the week is the Lord’s Day. It is a Christian institution for regular observance. It commemorates the resurrection of Christ from the dead and *should include exercises of worship and spiritual devotion, both public and private.*”) (emphasis added).³

² As noted in the statement of Interest of *Amici Curiae*, *supra*, the ERLC, LCMS, and NAE speak on behalf of their Convention, denomination, and members, which, in Nevada, include nearly 200 Southern Baptist churches, 24 LCMS member congregations, and scores of other evangelical Protestant churches that collectively are attended by thousands of Nevadans.

³ The Baptist Faith & Message 2000 is the official doctrinal statement of the SBC. Churches affiliated with the SBC may

Accordingly, for nearly 2,000 years, Christians have gathered on the first day of each week to celebrate and remember Christ’s resurrection. Indeed, the Greek word ἐκκλησία, translated “church” in the English version of the Christian scriptures, means “*a gathering of citizens called out from their homes into some public place*” or “*an assembly of Christians gathered for worship.*” See Joseph Henry Thayer, *Greek-English Lexicon of the New Testament*, 195–196 (1889) (emphasis added); see also Frederick W. Danker, *A Greek-English Lexicon of the New Testament and Other Early Christian Literature*, 303 (3rd ed. 2000) (noting ἐκκλησία refers to “a specific Christian group *assembly, gathering* ordinarily involving worship and discussion of matters of concern to the community”) (emphasis added).

The Southern Baptist, Lutheran, and evangelical congregations represented by *amici* are willing and have proven their ability to assemble in ways designed to prevent the spread of COVID-19, such as gathering outdoors, wearing masks, and social distancing. See, e.g., Ad Hoc Committee of Catholic Doctors, *Road Map to Re-Opening Our Catholic Churches Safely* (May 2020), available at <https://www.cathmed.org/wp-content/uploads/2020/05/Road-Map-to-Opening-Our-Churches12May20V2.pdf> (last visited December 4, 2020) (identifying safest practices for attending Mass, receiving Communion, and attending confession); Thomas W. McGovern et al., *Evidence-Based Guidelines to Celebrate Mass Safely Are Working*, RealClear Science (August 19, 2020), available at [---

affirm additional or supplementary creeds and confessions, but must, at minimum, affirm the Baptist Faith & Message 2000.](https://www.realclearscience.com/articles/2020/08/19/evidence-</p>
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based_guidelines_to_celebrate_mass_safely_are_working.html (last visited December 4, 2020) (finding no reports of COVID-19 transmission in a Catholic church following guide-lines to prevent the spread of the coronavirus).

Houses of worship like Petitioner and the congregations represented by *amici* are willing to follow such guidelines as a way to further the common good and to protect themselves and their communities from the coronavirus. But indefinite and disparate restrictions on their ability to hold meaningful in-person gatherings in any respect represent a major burden on their religious exercise. See generally *Roman Catholic Diocese of Brooklyn*, 20A87, 2020 WL 6948354 (U.S. 2020).

For example, a Southern Baptist church located mere blocks from this Court recently sought and received injunctive relief in District Court after the District of Columbia mayor's office declined the church's application for permission to assemble outdoors with attendees wearing masks and practicing social distancing. *Capitol Hill Baptist Church v. Bowser*, Case No. 20-cv-02710 (TNM), 2020 WL 5995126 (D.D.C. Oct. 9, 2020). The church explained it was willing to observe preventative measures and to alter the place and nature of its regular gatherings, but Holy Scripture compelled its belief in a "doctrinal requirement of a weekly gathering of its entire congregation[.]" *Id.* at *1. The District Court correctly concluded the District of Columbia's restrictions on religious gatherings imposed an unjustified burden on the church's religious exercise, and the court granted the preliminary injunction. *Id.* at *12.

While virtual or live-streamed worship services may, in some instances and for limited times, provide a pale shadow of gathered worship, they are not an adequate substitute. For instance, not every church and not every congregant has the ability to live stream their worship services or otherwise to worship together virtually. See United States Census Bureau, Quick Facts, *available at* <https://www.census.gov/quickfacts/NV> (last visited December 4, 2020) (noting nearly 20% of Nevada households lack broadband internet access).

In addition, providing quality online services is expensive, time-consuming, and requires considerable technical expertise, all of which prices many small churches out of the market. That is doubly true considering that churches have to minister to many audiences at once—small children, teenagers, college students, young professionals, older families, etc.—a task they can perform with relative ease on a Sunday morning at a church facility, but which is much harder to do online.

Further, the practices of church ordinances like Baptism and Communion require participation in person. See, e.g., LCMS, *What About... the Sacrament of the Altar*, *available at* <http://lcms.org/Document.fdoc?src=lcm&id=1088> (last visited December 4, 2020) (urging worshipers to “[d]raw near and take the body of the Lord”); *Baptist Faith & Message 2000*, art. VII (noting Baptist and the Lord’s Supper are physical acts of obedience performed by the gathered church). For at least some churches and congregants, then, the effect of the Emergency Directives is to apply the coercive might of the State to force them to forego fundamental aspects of their faith that are commanded by the Lord. See *Luke 22:19* (“And he took bread, and when he had

given thanks, he broke it and gave it to them, saying, “This is my body, which is given for you. Do this in remembrance of me.”); *John* 6:53–59; *Matthew* 28:19 (“Go therefore and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit.”); *Mark* 16:16 (“Whoever believes and is baptized will be saved . . .”); *John* 3:5 (“Jesus answered, Truly, truly, I say to you, unless one is born of water and the Spirit, he cannot enter the kingdom of God.”).

Awareness of and concern for the significance of gathered worship motivated the Founders to confound the Government’s ability to forbid religious assembly. During the First Congress, representatives debated and discussed the “distinctive character of the assembly right” and why it warranted “separate and independent protection in the First Amendment.” Michael W. McConnell, *Freedom of Association: Campus Religious Groups*, 97 WASH. UNIV. L. REV. 1641, 1641–42 (2020). As recognized in 1789 by John Page, a representative from Virginia, the right of assembly had not always been guaranteed, like when William Penn, after preaching in a public street in London, was prosecuted for unlawful assembly. *Id.* Specific examples, like that of William Penn, highlighted the principle that the right of assembly warranted specific protection along with other First Amendment rights:

The right of assembly or association focuses on something antecedent to the delivery of a message: on the process of formulation of ideas and selection of a message. A group of like-minded people—Presbyterians, say, or Democrats or veterans or the American Bar

Association—may not even know what their message on a particular issue will be until they have had the chance to meet. And this right of association involves a collective or communitarian element not necessarily present for mere speech. We may be able to speak spontaneously and as individuals, but we cannot communicate as a group unless we can gather as a group to share our ideas and aspirations.

Id. at 1642–43. See also John D. Inazu, *LIBERTY’S REFUGE: THE FORGOTTEN FREEDOM OF ASSEMBLY* 20–25 (2012) (noting the freedom of association derives from the freedom of assembly).

In sum, *amici* do not dispute or minimize the danger posed by the pandemic or the need to implement necessary and temporary measures to slow its spread. Indeed, congregations represented by *amici* have voluntarily adopted such protocols, and Petitioner has indicated its willingness and ability to implement science-based prophylactic measures. *Amici* cannot, however, acquiesce to the imposition of unequal and indefinite restrictions that impinge on their religious convictions. Nevada’s imposition of discriminatory attendance restrictions—granting greater leeway to favored industries and entities, while imposing more stringent requirements on houses of worship⁴—demonstrates the lack of necessity behind the challenged Emergency Directives. The First Amendment will not countenance the imposition of such unequal restrictions.

⁴ See generally Petition for Certiorari at 10–14, 20–30.

B. Emergency Directives 021 and 033 hamper the operations and ministries of houses of worship.

The Emergency Directives hinder not only gathered worship but also the financial viability, operational abilities, and related ministries of houses of worship. *First*, ongoing limitations on gathering impose financial harms on houses of worship in terms of diminished tithes and offerings—the financial lifeblood of a church. See *State of Giving 2020* at 16, Evangelical Counsel for Financial Accountability (November 2020), *available at* <https://www.ecfa.church/StateOfGiving/Default.aspx> (last visited December 4, 2020) (noting that nearly half of churches report giving was lower in 2020); see also *State of the Plate*, National Association of Evangelicals (April 22, 2020), *available at* <http://www.stateoftheplate.info/index.htm> (last visited December 4, 2020) (noting that in the early months of the pandemic, 65% of churches saw a downturn in giving due to COVID-19 shutdowns).

While attendance and giving have rebounded in States with even-handed or less onerous restrictions, the continued disparate restrictions in place in Nevada and a handful of other outlier jurisdictions pose continuing negative effects on houses of worship subject to them. See John Pryzbys, *Las Vegas houses of worship adjust to latest COVID mandate*, LAS VEGAS REVIEW-JOURNAL (November 26, 2020), *available at* <https://www.reviewjournal.com/life/religion/las-vegas-houses-of-worship-adjust-to-latest-covid-mandate-2191746/> (last visited December 4, 2020) (noting Governor Sisolak’s latest COVID-19 order will have “negative consequences” for the “long-term financial” health of houses of worship).

Second, limitations on gathered worship (and the concurrent financial toll they exact) diminish the ability of houses of worship to care for and minister to parishioners and the adjacent community. See, e.g., *State of Giving* at 20 (noting that from July to September 2020, nearly 65% of churches postponed or eliminated programs, facilities, or other services). These salutary services include the mental and psychological benefits of religious observance. For instance, rates of suicide, depression, and anxiety have increased markedly during the pandemic, driven in part by decreased access to religious support. See Mark A. Reger *et al.*, *Suicide Mortality and Coronavirus Disease 2019—A Perfect Storm?*, JAMA PSYCHIATRY (April 10, 2020) (“Weekly attendance at religious services has been associated with a 5-fold lower suicide rate compared with those who do not attend. The effects of closing churches and community centers may further contribute to social isolation and hence suicide.”) (citation omitted); see also David Gunnell *et al.*, *Suicide risk and prevention during the COVID-19 pandemic*, THE LANCET (Vol. 7, Issue 6 at 468–71, April 21, 2020) (noting the “suicide-related consequences” of “banning religious gatherings”).

In short, ongoing restrictions such as Emergency Directives 021 and 033 pose a financial crisis for many houses of worship and an existential crisis for some of their auxiliary ministries and for some of those to whom they minister.

C. Without certiorari before judgment, the impingement on free exercise will stretch for many more months.

This Court’s expedited consideration of the appeal prior to judgment is warranted lest the mere passage of

time compound and extend Petitioner's injury while awaiting the Court's review in the normal course. See *Elrod v. Burns*, 427 U. S. 347, 373 (1976) (plurality op.) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.").

Petitioner's free exercise has already been burdened for seven months as a result of the challenged Emergency Directives, and that injury will be extended further still while awaiting the Ninth Circuit's ruling and, if necessary, while seeking this Court's review and redress. In the Ninth Circuit, for example, 11.8 months typically pass between the filing of a Notice of Appeal and final disposition of the appeal. *Federal Court Management Statistics, U.S. Court of Appeals Summary at 2*, available at https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_appsummary0630.2020.pdf (last visited November 30, 2020). Subsequent time seeking certiorari, briefing the merits, preparing for argument, and awaiting the Court's ruling would add months more. See *A Reporter's Guide to Applications Pending Before the Supreme Court of the United States*, 22 (noting that more than 120 days pass between the filing of a petition for certiorari and the conclusion of the merits briefing before this Court), available at <https://www.supremecourt.gov/publicinfo/reportersguide.pdf> (last visited November 30, 2020); Richard A. Posner et al., *The Best for Last: The Timing of U.S. Supreme Court Decisions*, 64 DUKE L. J. 991, 993 n.5, 1006 (March 2015) (noting that from 1946 to 2012, the Court released its opinions an average of 83.6 days after oral arguments); *Final Stat Pack for October Term 2019*, SCOTUSBLOG, at 7 (July 20, 2020), available at <https://www.scotusblog.com/wp-content/uploads/2020/07/Final-Statpack-7.20.2020.pdf>

(last visited December 4, 2020) (noting that during the Court's October 2019 Term, the Court released its opinions, on average, 112 days after oral argument).⁵ Stated differently, in the absence of certiorari before judgment, the injury inflicted on Petitioners and similarly-situated churches and worshipers in Nevada may persist into late 2021 or even 2022.⁶

The burden on religious exercise warrants a judicial remedy, and the elongation of that infringement would impose an injury that is as extensive as it is irreparable.

II. Restrictions disproportionately burdening religious exercise undermine the credibility of, and the public's confidence in public health measures.

Public health restrictions that single out religious exercise for disparate and burdensome treatment

⁵ Additional delays are possible as well. For example, a petition filed close to or during the Court's summer recess might not be considered until the subsequent Term. A call for the Solicitor General's view of the petition could add several months to the timeline. See David C. Thompson and Melanie F. Wachtell, *An Empirical Analysis of Supreme Court Certiorari Petition Procedures: The Call for Response and the Call for the Views of the Solicitor General*, 16 GEO. MASON L. REV. 237, 291 (2009) (noting the Solicitor General takes an average of more than four months to respond to the Court's invitation to express a view of a petition).

⁶ The most recent projections indicate the pandemic may well persist until late 2021. See Sarun Charumilind et al., *When will the COVID-19 pandemic end?*, MCKINSEY & CO. (Nov. 23, 2020), available at <https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/when-will-the-covid-19-pandemic-end> (last visited December 4, 2020). Accordingly, State mandates like the Emergency Directives challenged here could be in place for at least another year.

erode public confidence in the State's ability to combat the pandemic in neutral and even-handed ways. The effectiveness of preventative health measures depends in large part on the public's trust that the restrictions are, in fact, reasonable and even-handed. The public's confidence in the rule of law and the government's impartiality takes a blow when (as here) certain entities, industries, and secular activities are given preference, while disfavored or less-well-connected groups are disproportionately burdened.

Public sentiment towards necessary and crucial health measures aimed at combating the COVID-19 pandemic is negatively impacted when casinos, gyms, restaurants, and liquor stores receive preferential treatment, while houses of worship are subject to discrimination. A regulation that "society is prepared to impose upon [religious groups] but not upon itself," is the "precise evil . . . the requirement of general applicability is designed to prevent." *Lukumi*, 508 U.S. at 545–46 (1993) (internal quotations and citations omitted). Further, double standards degrade the public's trust in government officials and measures. A public that loses faith in the validity of health measures is a public less likely to observe and comply with legitimate measures aimed at combating the pandemic. See Robert A. Blair et al., *Public health and public trust: Survey evidence from the Ebola Virus Disease epidemic in Liberia*, 172 SOC. SCI. & MED. 89 (2017) ("We find that respondents who expressed low trust in government were much less likely to take precautions against [a viral disease] in their homes, or to abide by government-mandated social distancing mechanisms designed to contain the spread of the virus."); see also Daniel Devine et al., *Trust and the Coronavirus Pandemic: What are the Consequences of*

and for Trust? An Early Review of the Literature, POL. STUD. REV. (Aug. 2020) available at <https://doi.org/10.1177/1478929920948684> (last visited December 4, 2020) (summarizing research indicating “that greater levels of public trust make the enactment and implementation of restrictive containment policies in democratic systems easier” and “greater trust in government leads to more compliance with health policies”); Lydia Saad, *Americans’ Readiness to Get COVID-19 Vaccine Falls to 50%*, GALLUP (Oct. 12, 2020) available at <https://news.gallup.com/poll/321839/readiness-covid-vaccine-falls-past-month.aspx> (last visited November 30, 2020) (noting that one’s willingness to be vaccinated against COVID-19 is tied to a one’s trust in government efforts).

While allowing States some latitude may have made sense in the early days of the pandemic, that is less true now. Over the past nine months, physicians and public health professionals have learned a great deal about how to manage and treat the spread of the virus. See J. David Goodman & Joseph Goldstein, *Virus Hospitalizations are Up in N.Y.C. But This Time, It’s Different*, THE NEW YORK TIMES (Oct. 30, 2020), available at <http://www.nytimes.com/2020/10/30/nyregion/new-york-city-coronavirus-hospitals.html> (last visited November 30, 2020). Accordingly, the latitude initially given to public officials is not (and never was) boundless nor was it permanent.

To be clear, the use of sensible and even-handed emergency orders to control the spread of a disease is legitimate. Most States have implemented COVID-preventative measures that place religious gatherings on even footing with similarly situated activities. A few outlier jurisdictions, however, including Nevada, have

relegated houses of worship to second-class status behind casinos, movie theaters, bowling allies, gyms, and bars. Such treatment is forbidden by the First Amendment and, perversely, undermines legitimate efforts to slow the spread of the virus. The pending Petition provides this Court with the opportunity to correct the constitutional violation, to provide guidance to the lower courts, and to restore public trust and compliance with public health measures that apply evenhandedly to all.

III. Immediate relief is warranted to prevent the Petitioner’s claim from being mooted, either intentionally or by the passage of time.

In the absence of this Court’s expedited intervention, the burdening of Petitioner’s religious exercise will stretch on unabated and may be shielded from this Court’s eventual review either by being intentionally mooted on the eve of review or by the passage of time as the proceeding wends its way through the judicial system. Governor Sisolak’s changing Directives to date (all of which have disproportionately burdened houses of worship) demonstrate the way in which he could attempt to moot Petitioner’s case on the eventual eve of this Court’s review. See, e.g., *New York State Rifle & Pistol Ass’n v. City of New York*, 140 S. Ct. 1525 (2020) (per curiam) (“After we granted certiorari, the State of New York amended its firearm licensing statute, and the City amended the rule Petitioners’ claim for declaratory and injunctive relief with respect to the City’s old rule is therefore moot.”).⁷ Such an eleventh-

⁷ Last-minute reversals have been attempted by other States’ officials in recent similar proceedings. See, e.g., *Roman Catholic Diocese of Brooklyn, New York v. Cuomo* (20A87), Letter of

hour reversal would not, of course, moot Petitioner's claim, because the injury here is capable of repetition but evading review. See *Federal Election Comm'n v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 462 (2007).

Alternatively, the delays inherent in the normal progress through the federal judicial system before reaching this Court means Petitioner's injury will stretch on for many more months. See Section I.C, *supra*. The issues raised by the pending Petition implicate matters of fundamental importance to people of faith across the United States, and not just for the COVID-19 pandemic but for future public health measures. Nor does it appear the exigencies of the current situation will soon pass. As justice delayed is justice denied, so too free exercise delayed is free exercise denied. This Court should not countenance it and should grant certiorari.

CONCLUSION

For the foregoing reasons, *amici curiae* respectfully request this Court grant the Petition for Certiorari

Respondent Andrew M. Cuomo (Nov. 19, 2020) (purporting on the eve of the Court's consideration to alleviate the challenged burden); *South Bay United Pentecostal Church v. Newsom* (19A1044), Opposition of Respondent Gavin Newsom, 14 (May 28, 2020) (arguing this Court need not review the State's religion-burdening restrictions because "California's newly issued guidance" would permit some "in-person worship this coming Sunday"); *Elim Romanian Pentecostal Church v. Pritzker* (No. 19A1046), Reply in Support of Emergency Application, 1 (May 29, 2020) ("Mere hours before his Response was due in this Court, the Governor announced a sudden change in his 10-person limit on religious worship services [] after vigorously defending his policy in both lower courts, and having announced barely 3 weeks ago that it would be 12 to 18 months before numerical limits on worship services were lifted.").

Before Judgment and bring needed clarity to First Amendment jurisprudence in this context.

Respectfully submitted,

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DECEMBER 10, 2020