

REPLY TO:

Riverside County Office:
25026 Las Brisas Road
Murrieta, California 92562
Telephone: (951) 600-2733
Facsimile: (951) 600-4996

Orange County Office:
1601 E. Orangewood Avenue
Suite 175
Anaheim, California 92805
Telephone: (714) 978-2060

Robert H. Tyler
Jennifer L. Bursch
Of Counsel
John V. Giardinelli
Nicolai Cocis

R. Todd Frahm
Nathan R. Klein
Nada H. Higuera
Cody J. Bellmeyer

July 27, 2020

Via U.S. Mail and Electronic Mail
PH-Admin@ventura.org

Rigoberto Vargas, MPH
Public Health Director
County of Ventura
2240 East Gonzales Road, Suite 210
Oxnard, CA 93036

RE: Godspeak Calvary Chapel

Dear Rigoberto Vargas:

I represent the interest of Pastor Rob McCoy and Godspeak Calvary Chapel.

I am informed that you contacted Pastor McCoy and threatened that the County of Ventura will be taking enforcement action against Pastor McCoy and/or the church because the church congregation is exercising its First Amendment right to the free exercise of religion. I want to advise you that my clients will file suit and seek an injunction against the County of Ventura and any governmental agency that seeks to prevent my clients from exercising their faith in the manner dictated by their teaching and practice. Furthermore, we are in contact with the Civil Rights Division of U.S. Department of Justice and will seek their assistance if needed to prevent a violation of civil liberties.

We are keenly aware of the fact that the County of Ventura supported protests of hundreds of people as they marched, gathered in close contact without masks, and even did damage to private property in some instances. County officials chose the politically correct posture and turned a blind eye to the breach of peace under the guise that protestors were exercising their First Amendment rights. At a minimum, we demand you do the same in this instance.

We understand that you received a complaint from one individual about Godspeak Calvary Chapel. You have represented to Pastor McCoy that you are “obligated” to take action. This is not true as you are first obligated to support and defend the Constitution of the United States and the Constitution of the State of California.

“The principle that government, in pursuit of legitimate interests, cannot in a selective manner impose burdens only on conduct motivated by religious belief is essential to the protection of the rights guaranteed by the Free Exercise Clause.” *Church of the Lukumi Balalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1990). Indeed, “if the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral . . . and it is invalid unless it is justified by a compelling interest and is narrowly tailored to advance that interest.” *Id.* at 533.¹ Yet, that is precisely what Defendants are threatening to do by seeking to suppress religious activities while supporting and endorsing protests regarding social and racial issues. The Free Exercise Clause bars even “‘subtle departures from neutrality’ on matters of religion.” *Masterpiece Cakeshop v. Colorado Civil Rights Comm’n*, 138 S. Ct. 1719, 1731 (2018) (quoting *Lukumi*, 508 U.S. at 534). Here, that means the County and each of its individual officials, even when addressing the COVID-19 pandemic, are obliged “to proceed in a manner neutral towards and tolerant of [Pastor Rob McCoy and Godspeak Calvary Chapel’s] religious beliefs.” *Id.*

Presumably, the County is seeking to enforce COVID-19 orders issued by the State of California. But Governor Newsom’s own actions reflect a lack of neutrality on a statewide level by supporting and encouraging mass protests, sending a message that protests deserve preferential treatment. In *Soos v. Cuomo*, No. 1:20-cv-651, 2020 U.S. Dist. LEXIS 111808 (N.D. N.Y. June 26, 2020), the Governor of New York and the New York City Mayor openly encouraged protesters gathering in large numbers in New York, while continuing to prohibit in-person religious gatherings. *Id.* at *3-19. The court issued a preliminary injunction enjoining the enforcement of capacity limitations on religious worship because the disparate treatment for protesters as compared to religious congregants in a worship service violated the First Amendment. *Id.*, at *21-22, 37 (“[I]t is plain to this court that the broad limits of that executive latitude have been exceeded”). The court found that a restriction on indoor worship services that is not applied to protesters removes the law from generally applicability and thus mandates strict scrutiny. *Id.* at *33.

Likewise, the Governor’s conduct, the County’s conduct, and the orders you seek to enforce will “must undergo the most rigorous of scrutiny.” *Lukumi*, 508 U.S. at 546. The requirements to satisfy this scrutiny are so high that the government action will only survive this standard in rare cases, and the government bears the burden of meeting this exceptionally demanding standard. *Id.* Therefore, Ventura County must prove that only banning Godspeak’s religious gatherings and

The notion that courts should not employ the usual constitutional standards that govern Free Exercise claims such as *Lukumi*, in light of the ongoing pandemic, was explicitly rejected by Judge Collins in her dissenting opinion 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).

practices while encouraging protests from Black Lives Matter “advance[s] interests of the highest order and [is] narrowly tailored in pursuit of those interests.” *Id.*

The State and County must have a compelling governmental interest to satisfy strict scrutiny. *Id. at 533.* As of yet, most COVID-19 related cases have chosen not to challenge whether orders restricting religious practices lack a compelling state interest. But COVID-19’s real affect is finally being revealed through medical studies, experts and statistics. In sum, COVID-19’s actual risk is far less than what some originally believed.

As July 24, 2020, the County of Ventura reported 6,392 cases of coronavirus cases – presumably confirmed by a test. 67 deaths are reported as being coronavirus related. 102,226 persons have been tested. 853,896 live in the County. Of the deaths reported, 2 were between the ages of 25 and 44; 12 between the ages of 45 and 64; and 53 were over 65 years of age.²

We can extrapolate important information from these statistics and other information publicly available. We know that of the 67 deaths, most of them are the result of a co-morbidity. We can expect that many of the 67 deaths are more directly the result of a cause other than COVID-19. We intend to discover that information. 67 deaths represent only 1.05% of those individuals diagnosed with COVID-19.

We should assume that there are many more than 6,392 people who contracted COVID-19 who either displayed no symptoms or were never diagnosed. An analysis in Japan of the confirmed coronavirus cases aboard the Diamond Princess cruise found that 18 percent of the infected passengers were asymptomatic.³ In May, a sample study reflected on the fact that 4.65% of the persons tested had anti-bodies for COVID-19 in Los Angeles County.⁴ If the same were true in neighboring Ventura County, it should be expected that 39,706 persons have or have had the COVID-19 infection. If so, the actual rate of death in Ventura County would be a small fraction of 1%. More accurately, just 0.168% of those who contracted the virus.

In June, the World Health Organization reported that it is estimated that anywhere from 6% to 41% of the population has been infected with COVID-19 and are asymptomatic.⁵ Based on these more recent estimates from WHO, the actual rate of death could be even far less. Another study released in June by the American College of Physicians estimates that 40% to 45% of the general population is asymptomatic.⁶ Other experts agree. According to JAMA, the CDC director Dr. Robert Redfield estimated that 25% of people with COVID-19 may be asymptomatic,⁷ and National

² <https://www.venturacountyrecovers.org/>

³ <https://www.eurosurveillance.org/content/10.2807/1560-7917.ES.2020.25.10.2000180>

⁴ <https://jamanetwork.com/journals/jama/fullarticle/2766367>

⁵ <https://www.facebook.com/WHO/videos/840748076450603>

⁶ <https://www.acpjournals.org/doi/10.7326/M20-3012>

⁷ <https://www.npr.org/sections/health-shots/2020/03/31/824155179/cdc-director-on-models-for-the-months-to-come-this-virus-is-going-to-be-with-us>

Institute of Allergy and Infectious Diseases director Dr. Anthony Fauci estimated that 25% to 50% of cases may be asymptomatic.⁸

Therefore, if we conservatively assume that just 10% of Ventura County's population of 853,896 were asymptomatic (85,390 people) in addition to the 6,392 people who tested positive, then the current death rate would only be 0.073% of those persons infected with COVID-19. If the percentage of asymptomatic persons in Ventura County was actually 40% (341,558 persons), the death rate would only be 0.0196%.

In comparison to the entire population of the County, 67 deaths only represent 0.0078% of the total population. Therefore, in order to justify infringing on Godspeak's First Amendment right to the free exercise of religion, the County must argue that shutting down all indoor services to 853,896 people is justified by the small possibility that 0.0078% of people might actually contract and die from COVID-19. This restriction can hardly be justified as a compelling interest.

The County must also establish that its interest in restricting Godspeak's free exercise is narrowly tailored to advance that interest. As in *Lukumi*, the government's "interests could be achieved by narrower ordinances that burdened religion to a far lesser degree." *Id.* at 546. Recently, Godspeak invited Dr. Kelly Victory to speak on a livestream event regarding COVID-19.⁹ Dr. Victory is an expert regarding public health and implementing measures to protect public health. She made it very clear that many of the current measures taken to prevent the spread of COVID-19 are often ineffective, unnecessary, inappropriate and/or excessive.

As is publicly reported, COVID-19 predominantly affects those in nursing homes, the elderly and those with co-morbidity. The studies previously referenced show that the vast majority of the population who has contracted COVID-19 is unaffected and that the general population of Ventura County is at an extremely insignificant risk of harm from COVID-19. That begs the question: Why quarantine the healthy and those at minimal risk when an extremely small percentage of the general population have any risk whatsoever? Would it not be more safe to truly quarantine only those at serious risk of harm? This would obviously provide a more narrowly tailored approach to serving the interest of the government than to make a blanket order that prevents all 853,896 residents from exercising their religion by attending indoor church services.

Certainly, there are far less drastic measures that can be taken by the County of Ventura to reduce the spread of COVID-19 than to issue a blanket ban on indoor religious services. I encourage you to listen to Dr. Kelly's presentation and reconsider whether it is necessary to ban indoor church services. To avoid a future conflict, we request a meeting with appropriate health officers at the County in order to gain a better understanding of the studies, data and information upon which County relies.

⁸<https://www.youtube.com/watch?v=XJyCc8QbWAE&feature=youtu.be&t=4822>

⁹<https://www.youtube.com/watch?v=7hdxVQRGM4>

Rigoberto Vargas
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Re: Godspeak Calvary Chapel

Thank you for your attention to this letter. I look forward to hearing from you soon.

Sincerely,

TYLER & BURSCH, LLP



Robert H. Tyler
Attorney at Law

RHT/NNH/smp