

APP NO. 19A-1070

IN THE SUPREME COURT OF THE UNITED STATES

CALVARY CHAPEL DAYTON VALLEY,

Applicant,

v.

STEVE SISOLAK,

in his official capacity as Governor of Nevada; *et al.*,

Respondents.

To the Honorable Elena Kagan,
Associate Justice of the United States Supreme Court
and Circuit Justice for the Ninth Circuit

**RESPONDENTS STEVE SISOLAK AND AARON D. FORD'S RESPONSE TO EMERGENCY
APPLICATION FOR AN INJUNCTION AND RESPONDENT FRANK HUNEWILL'S LIMITED
JOINDER THERETO
PENDING APPELLATE REVIEW**

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STATEMENT OF THE CASE

I. INTRODUCTION

Nevada, like all other states, has declared a state of emergency to protect lives from the COVID-19 global pandemic. Nevada, like other states, has been forced to retrench reopening efforts following increases in cases and positive tests. Nevada has not yet had to re-close all bars, as Texas did last month.¹ Nevada has not yet had to re-close all worship services, as California has in many counties.² But Nevada has had to close “[b]ars, pubs, taverns, breweries, distilleries, and wineries in [counties] with an Elevated Disease Transmission.”³ This includes Lyon County, where Applicant is located.⁴

To minimize the risk of transmitting COVID-19, social distancing requirements for larger gatherings—where people congregate together and interact for an extended period of time—must be different than requirements for individual engagement in commerce. The best currently available data indicates that COVID-19 is most effectively spread through interpersonal interaction with an infected person (or worse, multiple persons), particularly over an extended period of time. Sadly, the types of communal, interpersonal gatherings that put Nevada citizens most at risk for spreading the virus include larger, in-person religious services—

¹ See <https://www.dshs.state.tx.us/coronavirus/opentexas.aspx> (last visited July 14, 2020).

² See <https://covid19.ca.gov/roadmap-counties/> (last visited July 14, 2020).

³ See [http://gov.nv.gov/News/Emergency_Orders/2020/2020-07-10_-_COVID-19_Declaration_of_Emergency_Directive_027_\(Attachments\)/](http://gov.nv.gov/News/Emergency_Orders/2020/2020-07-10_-_COVID-19_Declaration_of_Emergency_Directive_027_(Attachments)/) (last visited July 14, 2020).

⁴ See Nevada’s Elevated Disease Transmission Tracker (July 10, 2020), attached hereto as Respondents’ **Exhibit 1**.

which are a major source of COVID-19 infections.⁵ Nevada’s actions to limit all such gatherings, not just religious gatherings, initially “flattened the curve,” allowing it to begin efforts to reopen slowly to avoid further harm to its citizens. As COVID-19 scientific knowledge evolves, Nevada’s response will likewise evolve.

Applicant Calvary Chapel Dayton Valley (“Applicant” or “Calvary”) seeks an emergency injunction pending appeal on the mistaken premise that Nevada’s emergency directives (specifically Directive 021) treat houses of worship differently than comparable mass gatherings. This is not true. Consistent with *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), as recently reaffirmed by this Court in *South Bay United Pentecostal Church, et al. v. Newsom, et al.*, 140 S. Ct. 1613 (May 29, 2020), Nevada has been attempting to determine “when restrictions on particular social activities should be lifted during the pandemic.” *South Bay*, 140 S. Ct. at 1613. As recognized by this Court, it “is a dynamic and fact-intensive matter subject to reasonable disagreement.” *Id.* “That is especially true where, as here, a party seeks emergency relief in an interlocutory posture, while local officials are actively shaping their response to changing facts on the ground.” *Id.* at 1614. “The notion that it is ‘indisputably clear’ that the Government’s limitations are unconstitutional seems quite improbable.” *Id.*

Here, Calvary’s emergency application seeks the identical “emergency relief in an interlocutory posture” that this Court previously rejected in *South Bay*.

⁵ See Kate Conger et al., *Churches Were Eager to Reopen, Now They Are a Major Source of Coronavirus Cases*, The New York Times, (July 8, 2020), <https://www.nytimes.com/2020/07/08/us/coronavirus-churches-outbreaks.html?action=click&module=Top%20Stories&pgtype=Homepage>.

Nevada’s requirements and restrictions on public gathering are issued with an eye toward reducing risk to its citizens during an evolving public health emergency. Calvary’s disagreement with Nevada’s decisions on reopening, even if subject to reasonable dispute, does not entitle it to the stay it seeks.

Given the evolving nature of the COVID-19 crisis, and Nevada’s ongoing response to it, the emergency application should be denied.

II. BACKGROUND

A. The Global Pandemic

The World Health Organization (“WHO”) declared COVID-19 to be a pandemic on March 11, 2020. The WHO “called . . . for countries to take urgent and aggressive action” *Id.* The President declared an emergency on March 13, 2020. Upon information and belief, each state has declared an emergency as a result of COVID-19.

COVID-19 has infected more than three million people in the United States. Nearly one hundred thirty-six thousand Americans have died of COVID-19. *Id.* There is no vaccine. All of us are aware of the COVID-19 global pandemic and the significant loss of life and business it has caused our country.

B. Nevada’s Response to the Global Pandemic

Consistent with the recommendations of health experts, Nevada Governor Sisolak declared a state of emergency on March 12, 2020.⁶ Subsequently, Governor

⁶ Respondents request that the Court take judicial notice of Nevada’s emergency declaration and subsequent directives pursuant to Fed. R. Evid. 201.

Sisolak issued emergency directives to mitigate COVID-19 spread, followed by efforts to slowly reopen Nevada after initial success. Based on recent increases in COVID-19 cases and deaths, Nevada has revisited these directives, including re-closing “[b]ars, pubs, taverns, breweries, distilleries, and wineries in [counties] with an Elevated Disease Transmission.”⁷ This includes Lyon County, where Applicant is located.⁸

Whether Nevada will have to step back further from its attempted reopening, as other states have had to in recent days, remains unclear but is certainly possible.

C. Directive 021

Calvary challenges Directive 021, issued on May 28, 2020, which began Phase 2 of Nevada’s reopening.⁹ Generally speaking, it treats religious organizations better or the same as other mass social gatherings that are most similar to it in how people congregate together and communicate.

1. Mass Gatherings Generally

Section 10 of Directive 021 addresses mass gatherings generally. It increases the limit for mass gatherings from 10 people to up to 50 people. s alleged by

These documents are located on the Nevada Governor’s website at http://gov.nv.gov/News/Emergency_Orders/Emergency_Orders/.

⁷ See [http://gov.nv.gov/News/Emergency_Orders/2020/2020-07-10_-_COVID-19_Declaration_of_Emergency_Directive_027_\(Attachments\)/](http://gov.nv.gov/News/Emergency_Orders/2020/2020-07-10_-_COVID-19_Declaration_of_Emergency_Directive_027_(Attachments)/) (last visited July 14, 2020).

⁸ See Nevada’s Elevated Disease Transmission Tracker (July 10, 2020), attached hereto as Respondents’ **Exhibit 1**. This belies Applicant’s argument that the danger associated with COVID-19 is small in Lyon County. App. at 5, 18.

⁹ See [http://gov.nv.gov/News/Emergency_Orders/2020/2020-05-28_-_COVID-19_Declaration_of_Emergency_Directive_021_-_Phase_Two_Reopening_Plan_\(Attachments\)/](http://gov.nv.gov/News/Emergency_Orders/2020/2020-05-28_-_COVID-19_Declaration_of_Emergency_Directive_021_-_Phase_Two_Reopening_Plan_(Attachments)/) (last visited July 14, 2020).

Calvary, religious organizations are being treated *the same or better* than mass gatherings of the general public.

2. Numerous Other Venues are Limited to No More than 50 People

Directive 021 imposes limits to the lesser of 50% occupancy or 50 people on numerous activities and venues within Nevada. These include:

- Movie theatres; (*see id.* at § 20)
- Museums, art galleries, zoos, and aquariums; (*see id.* at § 30) and
- Trade schools and technical schools. *Id.* at § 32.

Further, Directive 021 maintains stricter limits on live entertainment and concerts, *prohibiting* spectators entirely. Directive 021 at § 22 (emphasis added).

In short, multiple mass gatherings are treated the same as or *worse than* houses of worship.

3. Nevada Gaming Establishments

In totality, and specifically for health and safety purposes, gaming establishments in Nevada already faced numerous additional restrictions not faced by houses of worship to qualify for greater occupancy. Gaming in Nevada is subject to regular, ongoing restrictions and enforcement in a manner more extensive than any religious gathering or ordinary business.¹⁰ Partial reopening for gaming entities

¹⁰ The right to hold a non-restricted gaming license is a privilege. NEV. R. STAT. 463.0129(2). Nevada imposes “strict regulation” of persons “related to the operation of licensed gaming establishments....” NEV. R. STAT. 463.0129(1)(c). All places where gaming is conducted are to be “assisted to protect the public health, safety, morals, good order and general welfare of the inhabitants of the State...” NEV. R. STAT. 463.0129(1)(e).

under Nevada’s COVID-19 restrictions thus added additional restrictions to those already in place.¹¹

To reopen, non-restricted gaming licensees were required to submit detailed reopening plans for review and approval by the Nevada Gaming Control Board, including comprehensive trainings for their employees, the provision of masks for all guests, and designated locations for taking COVID-19 tests and awaiting results.¹² “Nevada Gaming Control Board Agents may be present to observe some or all of these procedures.”¹³ Most importantly, the Nevada Gaming Commission has full authority to enforce the required reopening plans and related health requirements with its existing enforcement personnel. *See* Directive 021 at § 35.

More recently, in response to the COVID-19 crisis, the Nevada Gaming Control Board issued Notice 2020–43, requiring all patrons of gaming establishments to wear face coverings at table and card games if there is no other

¹¹ Nevada’s legislature created the Gaming Commission and the Gaming Control Board (“GCB”). NEV. R. STAT. 463.022, 030. The Commission and the GCB are to administer the Nevada Gaming Control Act to protect the public interest consistent with Nevada policy. NEV. R. STAT. 463.140(1). The GCB has “full and absolute power” to recommend to the Commission that a finding of suitability be revoked. NEV. R. STAT. 463.1405(3). This Commission “has full and absolute power and authority” to revoke a finding of suitability. NEV. R. STAT. 463.1405(4). This “full and absolute power and authority” includes “pursuing disciplinary action to limit, condition, suspend, and/or revoke a license, and/or impose a monetary fine against a licensee in accordance with the Gaming Control Act” for violation of Directive 021. *See* Directive 021 at § 35.

¹² *See* ECF No. 39-1, a courtesy copy of which is attached hereto as Respondents’ **Exhibit 2**.

¹³ *See* ECF No. 39-2, a courtesy copy of which is attached hereto as Respondents’ **Exhibit 3**.

barrier.¹⁴ Further, bars within gaming establishments that do not serve food have been closed and those that do serve food have had all service at bar tops closed.¹⁵

4. Communities of Worship and Faith Based Organizations

Consideration of the directives Calvary contests makes sense only within the above context. Section 11 of Directive 021 addresses communities of worship and faith-based organizations. Identical to mass gatherings generally and with equal treatment as to numerous other gatherings, indoor services are limited to a maximum of fifty people, subject to social distancing requirements. *Id.* Section 10 of Directive 016 places no limits on the number of congregants who may gather for outdoor religious services, subject to proper social distancing. This exception was not extended to movie theaters, museums, art galleries, zoos, aquariums, trade schools, and technical schools.

Plain comparison of the Directive 021 provisions highlights the same treatment for similar gathering types, premised on their relatively higher risk of COVID-19 transmission. It is rational and warranted as Nevada continues to seek safety. Complaints that mass gatherings must be treated the same as every aspect of commerce, which involve different lengths and types of person-to-person contact, have been rejected by numerous courts through the United States, including this Court, and must be rejected again here.

¹⁴ See <https://gaming.nv.gov/modules/showdocument.aspx?documentid=16837> (last accessed July 14, 2020).

¹⁵ See [http://gov.nv.gov/News/Emergency_Orders/2020/2020-07-10_-_COVID-19_Declaration_of_Emergency_Directive_027_\(Attachments\)/](http://gov.nv.gov/News/Emergency_Orders/2020/2020-07-10_-_COVID-19_Declaration_of_Emergency_Directive_027_(Attachments)/) (last visited July 14, 2020).

D. Prior Proceedings

Following full briefing and argument, the district court denied Calvary's emergency motion for a temporary restraining order and preliminary injunction, holding that the emergency directives are "neutral and generally applicable." Appendix A at 5. Specifically, in response to Calvary's focus on Nevada gaming establishments, the court found that "casinos are subject to much greater restrictions on their operations and oversight of their entire operations than places of worship," including social distancing, employee training, regular and explicit inspection, and specific enforcement and punishment alternatives for violating the Emergency Directive. *Id.* at 6–7.

Under such circumstances, where "other secular entities and activities similar in nature to church services have been subject to similar or more restrictive limitations on their operations," the "Court cannot find that the Emergency Directive is an implicit or explicit attempt to specifically target places of worship." *Id.* at 7.

Further, the district court rejected Calvary's as-applied challenge. First, the Court rejected Calvary's argument that outdoor protest activity pertaining to George Floyd's killing was similar to gatherings for places of worship. *Id.* at 8. Second, the district court found that there was no evidence of a pattern of selective enforcement against house of worship of the Emergency Directive. Appendix A at 8–9.

In a subsequent order, the Court noted the “need for the Court to exercise restraint” during a health crisis, declining Calvary’s invitation to “engage in potentially daily or weekly decisions about public health measures that have traditionally been left to state officials and state agencies with expertise in this area.” Appendix B at 4. Finally, the Court recognized that there “is a strong public interest in Defendants enforcing their regulations regarding the COVID-19 pandemic.” *Id.* at 5.

Rather than proceed with expedited briefing on its appeal, Calvary filed its emergency application with the Ninth Circuit. Following full briefing by the parties, the Ninth Circuit denied the emergency application, allowing Calvary to proceed with its opening brief on July 13, 2020. Appendix C. This emergency application followed.

III. ARGUMENT

A request for injunctive relief from this Court in the first instance “demands a significantly higher justification’ than a request for a stay, because unlike a stay, an injunction ‘does not simply suspend judicial alteration of the status quo but grants judicial intervention that has been withheld by lower courts.’” *Respect Maine PAC v. McKee*, 562 U.S. 996 (2010). The “legal rights at issue” must be “indisputably clear.” *Lux v. Rodrigues*, 561 U.S. 1306, 1307 (2010) (Roberts, C.J. in chambers). “A preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). Calvary must also show that it is “likely to suffer irreparable harm in the absence of preliminary relief,” that the balance of equities

tips in [its] favor,” *id.* at 20, and that the Court is likely to grant certiorari and reverse after the completion of lower-court proceedings. Shapiro et al., *Supreme Court Practice* § 17.13(b), p. 17–38 (11th ed. 2019). Calvary fails to satisfy these extraordinary standards given the existence of a continuing global pandemic, during which states like Nevada are responsible for making evolving public safety decisions against a novel coronavirus. Calvary cannot obtain this extraordinary remedy because it is unlikely to succeed on the merits. Calvary cannot demonstrate irreparable harm, as nothing prevents it from offering additional in-person services on a temporary basis, or offering drive-in and virtual services to accommodate all congregants during the ongoing pandemic. In addition, the balance of equities and the public interest during these unprecedented times weigh heavily against injunctive relief, as Nevada attempts to battle an extended, and extremely fluid, public-health emergency. Temporarily narrowing restrictions on the size of mass gatherings, including for religious services, protects the health and well-being of Nevada citizens during a global pandemic.

A. Calvary is Unlikely to Succeed on the Merits of its Claims

1. The Exercise of Emergency Police Powers During a Public Health Crisis Warrants Additional Deference by This Court

Nevada’s power to regulate public health and safety, including the greater power of quarantine, predate the Constitution. *See Gibbons v. Ogden*, 22 U.S. 1 (1824) (recognizing reservation of public health authority to States); *Compagnie*

Francaise de Navigation a Vapeur v. Louisiana State Board of Health, 186 U.S. 380, 387 (1902) (upholding Louisiana’s quarantine power).

This Court long ago established a framework governing the emergency exercise of state authority during a public health crisis. *Jacobson v. Massachusetts*, 197 U.S. 11, 27 (1905). Facing a compulsory vaccination law enacted during the smallpox epidemic, the Court held that when a state exercises emergency police powers to enact an emergency public health measure, courts will uphold it unless (1) there is no real or substantial relation to public health, or (2) the measures are “beyond all question” a “plain palpable violation of rights secured by the fundamental law.” *Id.* at 30. This recognizes that “a community has the right to protect itself against an epidemic of disease which threatens the safety of its members.” *Id.* at 28. As the Court explained, “[t]he possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order, and morals of the community.” *Id.* at 26–27. The Court further held that during public health crises, “it is no part of the function of a court ...to determine which of two modes was likely to be the most effective for the protection of the public against disease.” *Jacobson*, 197 U.S. at 30.

Courts have consistently applied *Jacobson* to public health emergencies. *See, e.g., Prince v. Massachusetts*, 321 U.S. 158, 166–67 (1944) (applying *Jacobson* framework stating the “[r]ight to practice religion freely does not include the liberty to expose the community. . . to communicable diseases”). Courts have similarly done

so during this pandemic. *See, e.g., In re Abbott*, 954 F.3d 772, 778 (5th Cir. 2020) (applying *Jacobson* framework to constitutional challenge of Texas Governor’s COVID-19 executive order); *Elim Romanian Pentecostal Church et al. v. Pritzker*, Case No. 20-1811, 2020 WL 2517093 (7th Cir. May 16, 2020) (denying injunction pending appeal); *Elim Romanian Pentecostal Church et al. v. Pritzker*, Case No. 20-1811, 2020 WL 3249062 (7th Cir. June 16, 2020) (affirming district court denial of injunction).

After the Ninth Circuit denied an earlier request for an emergency injunction pending appeal in this case, this Court denied a California church’s emergency motion for injunction pending appeal, reaffirming *Jacobson*’s applicability. *See South Bay United Pentecostal Church, et al. v. Newsom, et al.*, 140 S. Ct. 1613 (May 29, 2020). First, this Court noted the difference between mass gatherings and commercial activities. Specifically, the Court stated that California’s restrictions “apply to comparable secular gatherings, including lectures, concerts, movie showings, spectator sports, and theatrical performances, where large groups of people gather in close proximity for extended periods of time.” *Id.* The Court further noted that California’s restrictions are more lenient for dissimilar activities, “in which people neither congregate in large groups nor remain in close proximity for extended periods.” *Id.*

Next, the Court reaffirmed *Jacobson* and the discretion of state officials such as Respondents to make emergency public health determinations. Specifically, the Court noted that “[o]ur Constitution principally entrusts ‘[t]he safety and the health

of the people’ to the politically accountable officials of the States ‘to guard and protect.’” *Id.* (quoting *Jacobson*, 197 U.S. at 38). Further, the Court held that when “those officials ‘undertake [] to act in areas fraught with medical and scientific uncertainties,’ their latitude ‘must be especially broad.’” *South Bay*, 140 S. Ct. at 1613 (quoting *Marshall v. United States*, 414 U.S. 417, 427 (1974)). Finally, “[w]here those broad limits are not exceeded, they should not be subject to second-guessing by an ‘unelected federal judiciary,’ which lacks the background, competence, and expertise to assess public health and is not accountable to the people.” *Id.* (quoting *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 545 (1985)).

Under *Jacobson*, as reaffirmed by *South Bay*, Calvary cannot prevail. First, Calvary cannot establish that Nevada’s emergency declaration and related directives have no real or substantial relation to public health, given the undisputed facts associated with COVID-19 and social distancing. Moreover, as set forth above, mass gatherings are different than commercial activities. Nevada’s emergency declaration and subsequent directives have addressed this public health risk. Similar to California’s order at issue in *South Bay*, comparable secular gatherings are subject to similar or more severe restrictions than places of worship, while dissimilar commerce activities where people neither congregate in large groups nor remain in close proximity for extended periods are treated more leniently.

Second, Calvary cannot establish that the emergency declaration and related directives are “beyond all question” a “plain palpable violation of rights secured by

the fundamental law.” As this Court stated in *Prince v. Massachusetts*, the “[r]ight to practice religion freely does not include the liberty to expose the community. . . to communicable diseases.” 321 U.S. at 166–67.

Respondents submit that Nevada’s actions comply with the Constitution, even if this was an ordinary exercise of the State’s police power, versus the emergency currently faced by us. Calvary’s claims will be addressed under those standards below.

B. The Directives Do Not Violate the Free Exercise Clause

Under traditional analysis of the Free Exercise Clause, “neutral, generally applicable laws” are subject to rational basis review, even where they are applied to religious practices. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 694 (2014); *see also Employment Division v. Smith*, 494 U.S. 872 (1990). In short, if the Orders do not target religion, “the First Amendment has not been offended.” *Employment Division*, 494 U.S. at 878. Because the Directives at issue in this case are neutral laws of general applicability, rationally based on the State’s goals of mitigating the spread and contraction of COVID-19, similar to what this Court determined to “appear consistent with the Free Exercise Clause of the First Amendment,” Calvary’s claims fail.

Here, Nevada has temporary emergency restrictions on comparable secular gatherings, each implemented prior to South Bay. Public attendance is prohibited for all musical performances, live entertainment, concerts, competitions, sporting events, and any events with live performances. Directive 021 at § 22. In short,

religious services are being treated better than “lectures, concerts, ... spectator sports, and theatrical performances.” “Movie showings,” the last comparable gathering identified by the Supreme Court, are limited to no more than 50 people, no better than religious services. *Id.* at § 20. Similar restrictions to the lesser of 50 people or 50% occupancy exist for museums, art galleries, zoos, aquariums, trade schools, and technical schools to the lesser of 50 people or 50% occupancy. *Id.* at §§ 30, 32. Good cause exists for the distinction: mass gatherings have a higher risk of COVID-19 transmission than general commerce.

1. This Court and Most Other Courts Have Rejected Similar Public Health Emergency Free Exercise Challenges

Specifically, this Court upheld this analysis in *South Bay United Pentecostal Church, et al. v. Newsom, et al.*, 140 S. Ct. 1613 at *1 (May 29, 2020). Prior to this Court’s affirmance, the Ninth Circuit upheld the denial of a request for injunctive relief pending appeal tied to holding any in-person religious services pursuant to the State of California and County of San Diego’s stay-at-home orders. *South Bay United Pentecostal Church, et al. v. Newsom, et al.*, 959 F.3d 938, 939 (9th Cir. 2020). There, the Ninth Circuit held that “[w]here state action does not infringe upon or restrict practices *because of their religious motivation* and does not “in a selective manner impose burdens *only on conduct* motivated by religious belief, it does not violate the First Amendment. *Id.* at *1 (internal quotations to *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993) omitted)(emphasis added).

Similarly, the Seventh Circuit denied a request for injunction pending appeal premised on a free-exercise claim against Illinois' emergency orders, recognizing that the temporary numerical restrictions applied "also to the most comparable types of secular gatherings, such as concerts, lectures, theatrical performances, or choir practices, in which groups of people gather together for extended periods, especially where speech and singing feature prominently and raise risks of transmitting the COVID-19 virus." *Elim Romanian Pentecostal Church et al. v. Pritzker*, Case No. 20-1811, 2020 WL 2517093 (7th Cir. May 16, 2020). The Seventh Circuit further observed that "[w]orship services do not seem comparable to secular activities permitted under the Executive Order, such as shopping, in which people do not congregate or remain for extended periods." *Id.* Ultimately, the Seventh Circuit upheld the lower court's ruling denying injunctive relief. *Elim Romanian Pentecostal Church et al. v. Pritzker*, Case No. 20-1811, 2020 WL 3249062 (7th Cir. June 16, 2020). There, Judge Easterbrook, as author for the unanimous opinion, recognized that it "would be foolish to pretend that worship services are exactly like any of the possible comparisons, but they seem most like other congregate functions that occur in auditoriums, such as concerts and movies." *Id.* at *5. The court further recognized that it does "not evaluate orders issued in response to public-health emergencies by the standard that might be appropriate for years-long notice-and-comment rulemaking," citing *Jacobson*.¹⁶ *Id.*

¹⁶ Other district courts have resolved Free Exercise challenges the same way. *See, e.g.*; *Legacy Church, Inc. v. Kunkel*, Case No. Civ. 20-0327 JB/SCY, 2020 WL 1905586 (D.N.M. Apr. 17, 2020); *Gish v. Newsom*, Case No. EDCV-20-

Here, Calvary’s reliance on *Roberts v. Neace*, 958 F.3d 409, *5 (6th Cir. 2020) is misplaced. There, prior to this Court’s guidance in *South Bay*, the Sixth Circuit actually stated that the “straightforward remedy” for addressing the in-person religious services risk was to “limit the number of people who can attend a service at one time.” 958 F.3d 409, *5 (6th Cir. 2020).¹⁷ Consistent with White House guidance, this is precisely what Nevada has done for *all* mass gatherings, including house of worship.

In short, this Court should rely on its prior decision to reject Calvary’s emergency motion for an injunction pending appeal.

2. Calvary’s Efforts to Characterize Secular Activities as Identical to Religious Services is Insufficient for Obtaining Emergency Injunctive Relief

Instead of acknowledging these comparable secular activities and the governing consensus, Calvary speculates that other activities it deems comparable are treated better than houses of worship. App. at 13–18. With the exception of casinos and mass protests, none were addressed with record evidence before the

755JGB (KKx), 2020 WL 1979970, at *6 (C.D. Cal. Apr. 23, 2020); *Lighthouse Fellowship Church v. Northam*, Case No. 2:20cv204, 2020 WL 2110416, at *8 (E.D. Va. May 1, 2020); *Cassell v. Snyders*, Case No. 20 C 50153, 2020 WL 2112374 (N.D. Ill. May 3, 2020); *Cross Culture Christian Center et al. v. Newsom*, Case No. 2:20-cv-00832-JAM-CKD, 2020 WL 2121111, at *6 (E.D. Calif. May 5, 2020); *Calvary Chapel of Bangor v. Mills*, Case No. 1:20-cv-00156-NT, 2020 WL 2310913, at *8 (D. Me. May 9, 2020); *Spell v. Edwards*, 2020 WL 2509078 (M.D. La. May 15, 2020); *Antietam Battlefield KOA v. Hogan*, No. CV CCB-20-1130, 2020 WL 2556496, at *7–9 (D. Md. May 20, 2020).

¹⁷ Similarly, Calvary’s reliance on a non-binding concurrence in *Spell v. Edwards*, __ F.3d __, Case No. 20-30358, 2020 WL 3287239 (5th Cir. June 18, 2020) is misplaced, as the challenged Louisiana regulation had expired, making the request for injunctive relief moot.

district court. Instead, Calvary breezily offers its opinion as to restaurants, amusement and theme parks, and gyms and fitness facilities, substituting its judgment for that of the Nevada public health officials who are responsible for addressing the COVID-19 pandemic.¹⁸ *Id.* Jacobson’s central holding is that emergency public health decisions are left by the Constitution to a State’s elected officials, who are most accountable for their decisions to their affected citizens.

Further, as noted above, gaming establishments face numerous additional restrictions and regulatory oversight not faced by houses of worship, making them dissimilar activities. Failure for gaming establishments to follow the Emergency Directive risks significant punishment.¹⁹ There is no comparable basis on which non-compliance can effectively be enforced against a house of worship. Instead, houses of worship and other entities impacted by Directive 021 are subject to enforcement by *local law enforcement*, subject to their prioritization of resources. Choosing to reopen a highly regulated industry, that is subject to significant regulatory control that allows for a rapid shutdown if a second COVID-19 outbreak arises, makes sense. This policy determination warrants deference from a court, as “[o]ur Constitution principally entrusts ‘[t]he safety and the health of the people’ to the politically accountable officials of the States ‘to guard and protect.’” *South Bay*,

¹⁸ Nevada’s Chief Medical Officer disagrees with the asserted opinions of Calvary’s purported expert pertaining to COVID-19 risks associated with religious services. See ECF No. 39-4, a courtesy copy of which is attached hereto as Respondents’ **Exhibit 4**.

¹⁹ It would be inappropriate for Respondents to speculate as to the enforcement actions the Gaming Control Board and the Gaming Commission may undertake following investigation into alleged Directive violations identified by Calvary.

140 S. Ct. at 1613 (quoting *Jacobson*, 197 U.S. at 38). Under these temporary circumstances, Nevada is entitled to deference on its regulated, limited reopening of gaming establishments.

Finally, Calvary takes issue with Respondents' approach to protests arising from the George Floyd killing. Those protests, however, are factually distinct from indoor religious worship services. Without dispute, these protests have raised serious discussions pertaining to policing and race. In this context, Calvary argues that Respondents' inability to prevent protests or to force local law enforcement to arrest all who violated Directive 021 implies that Respondents are favoring protestors over houses of worship. As noted by the district court, "[o]utdoor protests involve dynamic large interactions where state officials must also consider the public safety implications of enforcement of social distancing." Appendix A at 8.

Respondents, as elected leaders, are attempting to address important community issues while also calming a volatile situation.²⁰ As noted by the Lyon County Sheriff, local law enforcement has the right to prioritize preserving public safety. Making efforts to maintain a safe community is not a restriction on the content of anyone's expression. In short, the purported refusal to arrest protestors does not constitute a violation of Calvary's First Amendment rights.²¹

²⁰ As a preliminary matter, there is no record evidence that the Governor violated Directive 021. The pictures associated with the article cited by Calvary in its Application do not clearly show more or less than 50 attendees at the protest and the article makes no reference to the size of the protest. See Application at 8 n. 5.

²¹ Finally, Calvary's contentions pertaining to Nevada's primary election ignore Nevada's significant efforts to reduce in-person voting in light of COVID-19, including the cooperative effort by the Secretary of State and each county

C. The Directives Do Not Otherwise Violate the First Amendment

Calvary contends that “Nevada privileges commercial speech over non-commercial religious speech[,]” but fails to explain the “commercial speech” Nevada privileged in a public place. App. at 17. Nevada reiterates that it has imposed similar or greater restrictions on secular mass gatherings, including movie theatres, museums, and all spectator events. No preference has been provided for commercial speech versus religious speech in public areas. In short, Nevada is not “regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.” *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819, 829 (1995). The record contains no evidence of selective enforcement against religious services, as the district court correctly found. Appendix A. at 9–10.

Further, there is no evidence before this Court or the lower courts that this directive has been enforced against Calvary or any other religious institution. None. Calvary’s reliance on *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981), which pertained to viewpoint discrimination by a municipality against certain messages for public billboards, is misplaced. Nevada’s directives do not regulate Calvary’s speech in the public forum on a viewpoint basis. Nothing stops Calvary or

clerk to mail ballots to each active registered voter. See <https://www.nvsos.gov/sos/Home/Components/News/News/2823/23> (detailing mail primary plan). The Secretary of State’s mail election efforts withstood multiple court challenges. See *Paher, et al. v. Cegavske, et al.*, Case No. 3:20-cv-00243-MMD-WGC at ECF No. 57 (denying first motion for temporary restraining order) and ECF No. 83 (denying second motion for temporary restraining order); *Corona, et al. v. Cegavske, et al.*, Case No. 20 OC 00064 1 B (1st Jud. Dist. Ct. Nev.).

protesters from expressing their views within the public square. Instead, Nevada’s directives regulate mass gatherings, which carry higher risks for COVID-19 transmission.

Calvary’s argument must be denied.

D. The Directives Comply with Rational Basis Review

Because the orders are neutral and generally applicable, Calvary has to show that they are unsupported by a rational basis to prevail. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 694 (2014). Given the State’s rational interest in limiting the spread of COVID-19, Calvary is unable to make such a showing.

Calvary’s analysis as to why the emergency directives do not constitute the “least restrictive means” of furthering any compelling interest highlights why *Jacobson* and *South Bay* provide state officials with added discretion when exercising emergency police powers. Even under ordinary instructions, out of federalism concerns, courts ensure that injunctions are “not overly intrusive and unworkable ... [and] would [not] require for its enforcement the continuous supervision by the federal court over the conduct of [state officers].” *Armstrong v. Davis*, 275 F.3d 849, 872 (9th Cir. 2001), *abrogated on other grounds by Johnson v. California*, 543 U.S. 499 (2005). Here, Calvary would have this Court substitute its judgment on public health pertaining to a novel coronavirus for that of Nevada’s officials responsible for public health. As circumstances change with this pandemic, Calvary proposes having this court arbitrate each effort by Nevada and other states to mitigate the risks associated with COVID-19. At this uncertain moment, where

the Constitution reserves public emergency powers to states like Nevada, Calvary and its counsel should not be allowed to continually second-guess Nevada's efforts to protect public health against a novel, highly contagious virus.

Here, Directive 021 was developed in response to an emergency situation, unlike the ordinance at issue in *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 543 (1993). Directive 021 does not “pursue the [State]’s governmental interests only against conduct motivated by religious belief.” *Id.* at 545. It was not “gerrymandered with care to proscribe religious” gatherings. *Id.* at 521.

Directive 021 is neutral and generally applicable. It is facially neutral and does not “target” religious establishments. Again, “[t]he right to practice religion freely does not include liberty to expose the community ... to communicable disease...ill health or death.” *Prince v. Massachusetts*, 312 U.S. 158, 166–67 (1944). For these reasons, Calvary is unlikely to succeed on the merits of its Free Exercise claim.

E. Calvary is Unlikely to Suffer Irreparable Harm Without an Injunction

Calvary was already allowed to conduct in-person church services for up to 50 people a service, while continuing virtual or drive-up services. Simply doubling the number of existing church services would allow Calvary to conduct in-person church services for its entire congregation. Particularly where these mass gathering

requirements are generally applicable, there is no factual basis for concluding that Calvary has or will suffer irreparable harm while it prosecutes its appeal.

Calvary's presumption that it should be treated the same as a business operating in commerce ignores the difference between commerce and mass gatherings for purposes of COVID-19 risk. This Court and others have recognized these differences. The Governor has an obligation to protect Nevadans' health and well-being, based on an assessment of risk. Consistent with White House guidelines for mass gatherings, the Governor has implemented directives to slowly reopen Nevada in an effort to ensure the curve stays flat. Nevada would suffer irreparable harm should an emergency injunction be granted.

F. Denying the Injunction Protects Nevadans from Worsened Risk Of COVID-19

Calvary must also demonstrate that the granting of its Application is in the public interest. It is not.

Here, Calvary presumes it should be treated the same as a business, ignoring the particular risks associated with religious services. This Court has rejected ignoring these differences. In contrast, the Governor has an obligation to protect Nevadans' health and well-being, based on the risk during what one hopes is a once-a-century pandemic. Consistent with White House guidelines for mass gatherings, the Governor has implemented directives to slowly reopen Nevada to ensure the curve stays flat and that there is not a need to completely revert back to earlier phases that required further sacrifices from all Nevadans to remain safe.

Under such circumstances, the public interest and the harms to Nevada weigh against awarding Calvary emergency injunctive relief pending review of its appeal.

IV. CONCLUSION

This Court should deny the emergency application for preliminary injunction pending appeal.

Respectfully submitted.

/s/ Heidi Parry Stern

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RESPONDENT FRANK HUNEWILL'S LIMITED JOINDER

I. INTRODUCTION

The “question of when restrictions on particular social activities should be lifted during the pandemic is a dynamic and fact-intensive matter subject to reasonable disagreement.” *See S. Bay United Pentecostal Church, et al. v. Newsom, et al.* Case No. 19A1044, 2020 WL 2813056 at *2 (Supreme Court of the United States, May 29, 2020) (Roberts, C.J., concurring). However, it is well-established that the Constitution principally entrusts the health and safety of communities to the elected officials who are most accountable to the people and most knowledgeable about the specific needs of their communities. *See, e.g., id.; Marshall v. United States*, 414 U.S. 417, 427, 94 S. Ct. 700, 706 (1974); *Jacobson v. Massachusetts*, 197 U.S. 11, 38, 25 S. Ct. 358, 366 (1905).

Here, Frank Hunewill, the Sheriff for Lyon County, Nevada (the “Sheriff”), firmly believes that individual counties and their elected officials should be afforded discretion and wide latitude in addressing the novel coronavirus known as COVID-19. After all, the population, demographics, and very way of life in Lyon County is markedly different from other counties in Nevada - such as Clark County and Washoe County. As statistics confirm, the spread and impact of COVID-19 has also been different in rural Lyon County as compared to Nevada’s larger more populous counties.

Based upon his direct knowledge of the situation in Lyon County, the Sheriff has not used his limited law enforcement resources to monitor church attendance

and/or parishioners' adherence to social distancing. Rather, the Sherriff is optimistic that his fellow Lyon County residents will reasonably adhere to CDC guidelines and continue their efforts to help keep the community safe and healthy. Because the Sheriff is focused on protecting and serving the citizens of Lyon County, he takes no position regarding the propriety of state-wide COVID-19 measures, including Governor Sisolak's Directive 21. The Sheriff does, however, oppose Calvary Chapel Dayton Valley's Emergency Motion for an Injunction Pending Appeal to the extent such relief could limit his or any other Lyon County officials' ability to address the evolving COVID-19 situation and the unique needs of the businesses and residents in Lyon County.

II. LEGAL ARGUMENT

The Justices of this Court use their authority to issue an injunction “sparingly.” *See Hobby Lobby Stores, Inc. v. Sebelius*, 568 U.S. 1401, 1403, 133 S. Ct. 641, 642 (2012) (Sotomayor, J., in chambers) (citing 28 U.S.C. § 1651(a) and *Turner Broadcasting System, Inc. v. FCC*, 507 U.S. 1301, 1303, 113 S. Ct. 1806, 123 L.Ed.2d 642 (1993) (Rehnquist, C. J., in chambers)); *see also Ohio Citizens for Responsible Energy, Inc. v. Nuclear Regulatory Comm'n*, 479 U.S. 1312, 1312, 107 S. Ct. 682, 683(1986) (Scalia, J., in chambers). Accordingly, injunctive relief issues only in critical, exigent circumstances, when “the legal rights at issue are indisputably clear.” *Wisconsin Right to Life, Inc. v. Federal Election Comm'n*, 542 U.S. 1305, 1306, 125 S. Ct. 2, 159 L.Ed.2d 805 (2004) (Rehnquist, C.J., in chambers) (internal quotation marks omitted); *see also Fishman v. Schaffer*, 429 U.S. 1325,

1326, 97 S. Ct. 14, 15, 50 L.Ed.2d 56 (1976) (Marshall, J., in chambers); *Williams v. Rhodes*, 89 S. Ct. 1, 2, 21 L.Ed.2d 69, 70 (1968) (Stewart, J., in chambers).

In this case, Calvary's arguments regarding Governor Sisolak's Directive 021 are inapplicable to the Sheriff because he has not used his resources to monitor whether houses of worship are complying with the Directive. The Sheriff also does not plan to micromanage religious institutions that are wholly capable of making sound decisions for the health and safety of their parishioners.

That being said, the Sheriff believes that local governments need discretion in addressing the evolving COVID-19 situation. As Justice Jackson aptly stated, "a little practical wisdom" is needed in such uncertain times, lest the Constitution and Bill of Rights become "a suicide pact." *Terminiello v. City of Chicago*, 337 U.S. 1, 37, 69 S. Ct. 894, 910 (1949) (Jackson, J., dissenting) (cited with favor in *S. Bay United Pentecostal Church v. Newsom*, 959 F.3d 938, 939 (9th Cir. 2020)). Indeed, while the Sheriff firmly believes in the importance of free speech, assembly, and the right to worship, Lyon County and the Sheriff should also be able to enforce non-discriminatory, neutral measures if necessary, to protect the community.

Thus, to the extent Calvary Chapel seeks injunctive relief that would limit the Sheriff's ability to enforce county-specific measures that may become necessary at a future date, the emergency motion for an injunction pending appeal should be denied. *See, e.g., Helvering v. Gerhardt*, 304 U.S. 405, 427, 58 S. Ct. 969, 978 (1938) ("The genius of our government provides that, within the sphere of constitutional action, the people-acting not through the courts but through their

elected legislative representatives-have the power to determine as conditions demand, what services and functions the public welfare requires.”

III. CONCLUSION

A preliminary injunction “does not follow as a matter of course from a plaintiff’s showing of a likelihood of success on the merits.” *Benisek v. Lamone*, 138 S. Ct. 1942, 1943-44 (2018). Instead, injunctive relief remains “an extraordinary remedy that the Court may deny “[a]s a matter of equitable discretion.” *Id.* at 1943.

For the reasons stated above, this Court should be cautious to distinguish the State of Nevada Respondents from the Sheriff. And, given the deference owed to those local officials who are answerable directly to the people in their community, this Court should deny any injunctive relief that would impose any requirement or limit the Sheriff in his ability to address the specific needs of Lyon County during the evolving COVID-19 situation.

Respectfully submitted.

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CERTIFICATE OF COMPLIANCE

19A-1070

CALVARY CHAPEL DAYTON VALLEY

Applicant,

v.

STEVE SISOLAK,

Respondent.

As required by the Supreme Court Rule 33.1(h), I certify that the Brief in Opposition contains 6,816 words, excluding the parts of the Brief that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 15, 2020

/s/ Heidi Parry Stern

Heidi Parry Stern
Nevada Solicitor General

Exhibit 1

Exhibit 1



Nevada's County COVID-19 Elevated Disease Transmission Tracker

Background

Nevada's counties are diverse in so many ways and have been impacted by COVID differently. In order to ensure that each county is assessed for elevated disease transmission, the Nevada Health Response Team, a collaboration between the Governor's Office, Department of Health and Human Services, and the Division of Emergency Management, has created a county tracker. This tracker will be updated regularly to monitor progress.

Understanding the Data Being Monitored

When reviewing the data, a few assumptions should be noted, such as:

- COVID positive case rates amongst state and federal prison inmates and staff are also included in the disease transmission data;
- Testing data may help explain or provide context for interpreting the elevated disease transmission data.

Elevated Disease Transmission

The 14-day case rate and 7-day testing positivity rate are used to assess the level of COVID-19 burden in a county. For each measure, the higher the number, the more a county is impacted by COVID-19. However, it is important to look at this data in the context of average number of tests per day, as well as who is being tested. In general, higher number of tests per day indicates more widespread testing for COVID-19 beyond individuals who have symptoms. This means that more individuals who either do not have COVID-19 or have COVID-19 but are asymptomatic will be tested. As a result, as the number of tests per day increases, the case rate may increase (due to the identification of asymptomatic cases) and the testing positivity rate may decrease (due to more testing among individuals who do not have COVID-19).

A county is flagged for elevated disease transmission if it meets two of the three criteria:

1. **Average number of tests per day (per 100,000) < 150.** The average number of cases resulted during the previous week in a county, divided by the number of people living in the county. This number is then multiplied by 100,000 to control for varying populations in counties.
2. **Case rate (per 100,000) > 100.** The total number of cases diagnosed and reported over a 14-day period divided by the number of people living in the county. This number is then multiplied by 100,000 to control for varying populations in counties.
3. **Case rate (per 100,000) > 25 AND testing positivity > 7.0%.** The total number of positive polymerase chain reaction (PCR) tests divided by the total number of PCR tests conducted. This number is then multiplied by 100 to get a percentage. Due to reporting delay (which may be different between positive and negative tests), there is a 7-day lag.



Nevada's County COVID-19 Elevated Disease Transmission Tracker

Tracker Results as of 7/9/20

County	Elevated Disease Transmission Case Rate > 100 per 100,000 OR Case Rate > 25 and Positivity > 7%			# of Criteria Met
	Average # of test per day per 100,000	Case Rate per 100,000 (last 14 days)	Test Positivity (7 day average, with 7 day lag)	
Carson City	199.3	95.5	15%	1
Churchill	175.6	61.8	2%	0
Clark	297.7	336.4	10%	2
Douglas	53.5	40.2	6%	1
Elko	208.9	160.0	11%	2
Esmeralda	220.0	0.0	0%	0
Eureka	72.7	0.0	0%	1
Humboldt	118.1	46.9	22%	2
Lander	159.6	100.1	21%	2
Lincoln	27.5	0.0	0%	1
Lyon	79.8	55.2	13%	2
Mineral	178.5	21.9	0%	0
Nye	77.5	204.6	18%	3
Pershing	90.3	57.5	0%	1
Storey	16.0	0.0	0%	1
Washoe	200.7	193.2	8%	2
White Pine	1775.9	28.3	1%	0

Exhibit 2

Exhibit 2

EXHIBIT D

**Health and Safety Policies
for Resumption of Gaming
Operations – Nonrestricted
Licensees (May 27, 2020)**

EXHIBIT D

HEALTH AND SAFETY POLICIES FOR RESUMPTION OF GAMING OPERATIONS

NONRESTRICTED LICENSEES

INTRODUCTION

On March 12, 2020, Governor Steve Sisolak issued the Declaration of Emergency for COVID-19 pursuant to the emergency powers conferred upon the Governor of Nevada by chapter 414 of NRS. Pursuant to his Declaration of Emergency, Governor Sisolak issued Emergency Directive 002 on March 18, 2020, which suspended all gaming operations for 30 days. The expiration of Emergency Directive 002 was subsequently extended to April 30, 2020 by Emergency Directive 010. Pursuant to Governor Sisolak's "Nevada United: Roadmap to Recovery" plan, gaming operations will not resume in the beginning stage of recovery, and it will be incumbent upon the Board to ensure the safe reopening of gaming operations in this State.

The purpose of these policies and procedures (Policy) is to notify Nevada's nonrestricted gaming licensees of new operational requirements to mitigate and reduce the risk of exposure to COVID-19 for all employees, patrons, and other guests. This Policy constitutes the minimum requirements to be followed, and does not preclude a gaming licensee from implementing its own additional requirements.

NRS 463.0129(1)(d) requires that all establishments where gaming is conducted and where gaming devices are operated be controlled and assisted to protect the public health and safety of Nevada's residents. The Nevada Gaming Control Board (Board) and Nevada Gaming Commission remain resolute in ensuring that gaming operations in this State do not compromise the health and safety of Nevadans.

In consultation with the Office of the Governor, as well as federal, state, and local health officials, the Board has created this Policy to diminish personal contact and increase the level of disinfection in high-use areas, and expects full compliance with this Policy by its nonrestricted licensees. COVID-19 research is continuously developing. In the event of a conflict between any provision set forth in this Policy and any policy or requirement of a federal, state, or local health authority, the requirements set forth by those health authorities shall control.

The Board issued Industry Notice #2020-25 on May 1, 2020. On May 7, the Nevada Gaming Commission ratified this Policy and confirmed the Board's ongoing responsibility to issue health and safety policies for the gaming industry. On May 27, the Governor directed the Board to promulgate requirements for a phased and incremental resumption of gaming operations, and confirmed that the failure of a gaming licensee to comply with any such requirements shall be considered injurious to the public health, safety, morals, good order, and general welfare of the inhabitants of the State, and constitute a failure to comply with the Governor's Emergency Directives.

CREATION AND IMPLEMENTATION OF COVID-19 MITIGATION PLAN

Using this Policy as a guide, each nonrestricted licensee must create and implement a plan to mitigate the spread of COVID-19 and infectious diseases (“Plan”). All Plans shall be submitted to Ops@gcb.nv.gov at least seven (7) days before reopening occurs. Plans required pursuant to this Policy should be regularly and continuously reviewed and executed to ensure the health and safety of licensees’ guests and employees. The Board will provide updates to this Policy as circumstances surrounding this health crisis evolve.

To comply with this Policy, the Board recognizes that certain statutory provisions, including, without limitation, those set forth in NRS 463.1605 and 463.01865, contain certain requirements imposed upon resort hotels licensed by the Commission after July 1, 1992. Pursuant to section 13 of the Governor's Declaration of Emergency Directive 016, the Board is required to implement a phased and incremental resumption of gaming operations. Accordingly, nonrestricted licensees subject to the requirements related to resort hotels may choose to delay full compliance with certain of those criteria when executing their Plans required pursuant to this Policy. A nonrestricted licensee that intends to delay full compliance with the resort hotel requirements must include full details thereof in their Plan. The Board will not consider delayed compliance with certain resort hotel criteria a violation of the Gaming Control Act, so long as a licensee’s Plan fully complies with this Policy. The Board will revisit this exercise of prosecutorial and regulatory discretion as the Governor's office and the Board continue to track the effects of COVID-19 on the State of Nevada.

PROCEDURES PRIOR TO RESUMING GAMING OPERATIONS

Prior to reopening, each nonrestricted licensee shall clean and disinfect all of its hard and soft surfaces in accordance with the guidelines published by the Centers for Disease Control and Prevention (CDC) for [Cleaning and Disinfecting Your Facility](#).

Each licensee must ensure its employees are adequately trained on: (1) the proper cleaning and disinfecting procedures set forth in the CDC’s guidance above; and (2) how to prevent the spread of infectious disease, including, without limitation, [social distancing](#), [handwashing](#), and not [spreading germs at work](#). Plans should ensure that any training provided pursuant to this Policy is documented by the licensee.

HEALTH AND SAFETY PROCEDURES ONCE OPERATIONAL

When implementing their plans, licensees should utilize the [Interim Guidance for Businesses and Employers to Plan and Respond to COVID-19](#), published by the CDC. The Board expects licensees to include the following components in its Plans.

Employee and Patron Health Concerns:

Signage should be posted throughout the property reminding employees and patrons of proper hygiene, including, without limitation, proper handwashing, how to cover coughs and sneezes, and to avoid touching their faces.

Employees should be instructed to stay home if they do not feel well, and to contact a supervisor or manager if they notice a co-worker or patron experiencing [symptoms associated with COVID-19](#), such as coughing, shortness of breath, or other flu-like symptoms.

If a licensee is informed or is alerted to a case of COVID-19 at its property, it must communicate the case to and cooperate with its local health authorities. All employees should receive clear instructions on how to properly and efficiently respond to all presumed cases of COVID-19. Licensees must follow the appropriate steps to conduct additional cleaning and disinfecting protocols of all areas that patrons visited during their stay in accordance with guidelines issued by the licensee's local health authority.

Plans should identify personnel or a department on property to serve as a liaison to assist local health authorities with aggregate data sharing and contact tracing.

Employee Training and Responsibilities:

Proper and frequent handwashing with soap is vital to help combat the spread of COVID-19. All employees should be required and consistently reminded to wash their hands with soap and warm water for 20 seconds, before the start of a shift, at least once during every break period, and several times during their shifts, including, without limitation, when they change gloves or otherwise contaminate their hands.

Appropriate personal protective equipment (PPE) may be required or recommended by federal, state, or local authorities. When required or recommended, licensees must ensure that PPE is available to employees and provide training on how to properly use and dispose of all PPE.

Plans must include a provision outlining training on COVID-19 safety and disinfection protocols for all employees. Additional comprehensive training must be provided for employees who work in areas with frequent patron contact, including, without limitation, housekeeping, food and beverage, internal maintenance, hotel operations, casino operations, and security. Training, whether conducted in person, online, by video, or in writing, should be available in English and Spanish.

Availability of Face Coverings for Patrons and Guests:

Plans must provide for the availability of face masks or [cloth face coverings](#) for patrons and guests upon request. Licensees should encourage patrons and guests to wear face masks or cloth face coverings while in public places on the licensee's property.

Gaming Machines:

Plans must ensure that the floor plan for gaming machines creates proper social distancing between patrons. For example, chairs and stools in front of every other gaming machines could be removed so that patrons do not sit next to each another, or licensees could propose other measures to ensure proper distance between patrons. Additionally, licensees should assign employees to focus on ensuring guests do not congregate in groups.

Plans must address how gaming machines, devices, chairs, and other ancillary equipment will be cleaned and disinfected on a regular basis. Plans should also address the availability of hand sanitizer or disinfectant wipes for patron use on the gaming floor.

Table Games and Card Games:

Plans must limit the number of patrons based on type of game to ensure proper distance between players by limiting the number of seats or betting positions per table, or licensees may submit alternative plans for approval by the Board. For example, player limit per table should be limited to: three players per blackjack table, six players per craps table, four players per roulette table, and four players per poker table. Casino supervisors and managers must ensure that patrons do not congregate in groups around gaming tables. Licensees should ensure dealers have hand sanitizer available to offer to patrons throughout their shifts.

Plans should ensure regular cleaning and disinfection of, without limitation, table games, rails, dice, card shoes, shufflers, roulette wheels, Pai Gow tiles, pit podiums, blackjack discard holders, and token boxes on a regular basis and when a new employee comes into contact with any of the aforementioned gaming equipment. Plans should also address how licensees will disinfect cards and chips.

Race & Sportsbooks, Keno Lounges, and Bingo Halls:

Plans must ensure that patrons do not congregate in groups and practice proper distancing in these areas. Plans must address how the race & sportsbook, keno lounge, bingo hall, and any other gaming area will be cleaned and disinfected on a regular basis. Plans should also address the availability of hand sanitizer or disinfectant wipes for patron use in these areas.

Responsible Gaming:

Plans must include the licensee's commitment to and implementation of responsible gaming measures. Licensees are encouraged to enhance their responsible gaming measures,

including, without limitation, providing enhanced training to employees and creating specialized messaging for patrons.

Occupancy Limits:

In order to achieve the social distancing guidelines issued by federal, state, and local health authorities, Plans must limit a property's occupancy to no more than fifty percent (50%) of the occupancy limit assigned to each gaming area of the property by local building and fire codes. Licensees' Plans should detail how compliance with this occupancy limit reduction will be achieved, which may include, without limitation, head counts by security personnel, utilization of a licensee's existing surveillance systems, and making use of a licensee's slot accounting system to aid in monitoring the number of patrons on the casino floor.

Social Distancing Guidelines:

The Board expects all licensees to comply with any and all health and safety guidelines and directives issued by federal, state, and local governing authorities with respect to the operation of hotels, restaurants, retail establishments, and pools.

Guest Queuing. Any area where patrons queue should have appropriate signage requiring social distancing in accordance with federal, state, and local health authority requirements.

Hotel Front Desk, Business Center, and Concierge. Social distancing protocols should be maintained among employees and patrons, consistent with federal, state, and local requirements.

Restaurants and Bars. All restaurants and bars should have reduced seating in accordance with federal, state, and local guidance to allow for appropriate distancing between each table and between patrons.

Meeting and Convention Spaces. Meeting and banquet arrangements should allow for social distancing among attendees during all meetings and events based on federal, state, and local recommendations. Food service for meetings and conventions should be served by personnel and managed in accordance with federal, state, and local requirements. The size of gatherings are further subject to restrictions set forth by a directive from the Office of the Governor or a local health authority.

Nightclubs and Dayclubs. Nightclubs and dayclubs within a licensee's property must be closed until further notice.

Retail Spaces. Patron occupancy limits and social distancing protocols should be consistent with federal, state, and local requirements and will be enforced at licensee-owned and leased retail spaces.

Pools. Pool seating should be configured in a manner consistent with federal, state, and local requirements to allow for appropriate distancing.

Back of House. Social distancing protocols, as provided by state and local health authorities, must be implemented in employee dining rooms, employee entrances, uniform control rooms, employee restrooms, loading docks, offices, kitchens, security scanning podiums, employee relations service desks, and training classrooms.

Cleaning & Disinfection Guidelines Generally:

The Board expects all licensees to comply with any and all health and safety guidelines and directives issued by federal, state, and local governing authorities with respect to the operation of hotels, restaurants, retail establishments, and pools.

Plans should ensure that all public areas will be cleaned and disinfected on a continual and regular basis in accordance with federal, state, and local guidelines for hotel operations. Licensees should increase the frequency of cleaning and disinfecting high-contact surfaces, including, without limitation, front desk check-in counters, bell desks, elevators and elevator buttons, door handles, public bathrooms, room keys and locks, ATMs, redemption terminals, rewards club kiosks, escalator and stair handrails, casino cage counters, gaming machines, gaming tables, gym equipment, dining surfaces, and restaurant menus. Additionally, all restrooms should be cleaned and disinfected on a regular basis.

Cleaning & Disinfection for Hotel Rooms and Operations:

Licensees should ensure that housekeeping staff receives comprehensive training on COVID-19 safety and disinfection protocols. Additionally, licensees should provide employees access to required PPE, cleaning products, and sanitizer. Any carts, trolleys, or mobile equipment utilized by or to transport employees should be disinfected on a consistent basis.

Plans should utilize cleaning products that meet Environmental Protection Agency (EPA) guidelines and are approved for use and effective against viruses, bacteria, and other airborne and bloodborne pathogens. A list of disinfectants approved by the EPA for use against COVID-19 can be found [here](#). All disinfectants should be used in accordance with their labels to ensure proper application, contact time, and user safety.

Plans should acknowledge the use of cleaning and disinfecting protocols to clean guest rooms approved by the CDC and Occupational Safety and Health Administration (OSHA). Licensees should ensure that increased attention is paid to high-touch items, including, without limitation, remote controls, toilets and handles, door and furniture handles, water faucet handles, nightstands, telephones, in-room control panels, light switches, temperature control panels, and flooring. Linens should be washed at a high temperature and with appropriate cleaning products in order to eliminate viral and bacterial pathogens.

Back of House. The frequency of cleaning and disinfecting will also increase in high traffic back of house areas with an emphasis on the employee dining rooms, employee entrances, uniform control rooms, employee restrooms, loading docks, offices, kitchens, security scanning podiums, employee relations service desks, and training classrooms.

Plans should ensure that any tools and equipment shared by employees will be disinfected before, during, and after each shift, or anytime the equipment is transferred to a different employee. This includes, without limitation, phones, radios, computers, other communication devices, payment terminals, engineering tools, safety buttons, folios, cleaning equipment, keys, time clocks, and all other direct contact items used by employees throughout the licensee's property.

COVID-19 Room Recovery Protocol. Plans must include a cleaning procedure in the event of notice or knowledge of a hotel guest with a confirmed case of COVID-19. The hotel guest's room must be removed from service and undergo an enhanced cleaning protocol as determined by local health authorities. The licensee is prohibited from returning that hotel room to service until the licensee has complied with the requirements set forth in NRS 447.100, as well as with any additional guidance from local health authorities.

Additional Requirements for Resort Hotels:

If a licensee is a resort hotel pursuant to the definition in NRS 463.01865, the licensee's Plan must confirm that it will, at a minimum: (1) conduct temperature screenings of hotel guests upon arrival; or (2) ensure that there is a medical professional on property at all times and require hotel guests to complete a symptom self-assessment upon check-in.

A licensee that is a resort hotel must also provide a designated area within the resort where hotel guests may be tested for COVID-19, and where such hotel guests can safely wait for the test results.

Cleaning & Sanitation for Restaurants, Bars, and Lounges:

Plans should ensure that all dining tables, bar tops, stools, and chairs are disinfected after each use. All host podiums, service stations, service carts, beverage stations, counters, handrails, and trays should be disinfected on a regular basis. All point of sale terminals should be disinfected between uses and after each shift.

Employees who handle food should comply with state and local health district guidelines.

CONCLUSION

This Policy is subject to revision by the Board based on recommendations from federal, state, and local health authorities related to the spread of COVID-19. The Board will keep nonrestricted licensees apprised of any changes so that Plans can be updated.

Exhibit 3

Exhibit 3

EXHIBIT E

**Policy Memorandum –
Procedures for
Reopening after
Temporary Closure
due to COVID-19 (Apr.
21, 2020)**

EXHIBIT E



STEVE SISOLAK
Governor

NEVADA GAMING CONTROL BOARD

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SANDRA D. MORGAN, *Chairwoman*
TERRY JOHNSON, *Member*
PHIL KATSAROS, *Member*

April 21, 2020

Las Vegas
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POLICY MEMORANDUM

Procedures for Reopening after Temporary Closure Due to COVID-19

To assist licensees with reopening after the mandated COVID-19 temporary closures, the Board has compiled a list of procedures that should, at a minimum, be considered and addressed. These procedures are not intended to be all encompassing. Other steps may be necessary and should be determined on an individual basis, and in consultation with the Board, as necessary.

A Reopening Plan must be established and emailed to the Audit Division (LVRisk@gcb.nv.gov or RNRisk@gcb.nv.gov) if the affected property is a Group I licensee, or to the Tax and License Division (TLCCompliance@gcb.nv.gov) if a Group II licensee. An additional copy should be emailed to the Enforcement Division (Ops@gcb.nv.gov).

Note that the reopening plan is not intended to serve as a vehicle for requesting required approvals or waivers, unless otherwise specified in the policy memorandum. Separate letters should be sent to the appropriate Board divisions for waiver requests.

The plan must be submitted at least seven (7) days before reopening occurs or as soon as reasonably possible thereafter. Additionally, all procedures performed during the reopening process must be in compliance with the Minimum Internal Control Standards (Group I licensees), the Internal Control Procedures (Group II licensees) or any Board approved variations of these standards/procedures that were active at the time of closure or were approved subsequent to the closure.

Reopening Plans must address the following items for each property, as applicable:

1. Contact information of person coordinating the reopening activity (i.e., name, title, phone number, e-mail address, and if available, mobile phone number that can be used to reach contact person during activities).
2. Notification of the reopening date and time. Additionally, identification of the gaming, entertainment and club venue areas that will be reopened and, if applicable, which will not. If the opening of various gaming/entertainment/club

venue areas are to be phased in, then the anticipated reopening dates/times for each area must be specified. Any changes made to a licensee's gaming day must also be specified.

3. A schedule for the replenishment of funds, including cash, chips and tokens, in all areas of casino accountability (e.g., hoppers, booths, cage, kiosks, fill cabinets, vaults, table games trays, etc.), along with an indication of the responsible department(s).
4. Licensees must ensure that the Audit Division (Group I licensees) and the Tax and License Division (Group II licensees) have been provided with the most current count and drop times required by NGC Regulation 6.130(1)(a).
5. There were certain quarterly and semi-annual filings that were due to be submitted to the Board during the time of the mandated closure, including those required by NGC Regulations 3.100(2), 5.050, 6.130(1)(b) and 8.130(1), respectively. The deadlines for these filings are administratively approved to extend to no later than 30 days after the Governor authorizes the reopening of gaming operations within the state.

The Tax and License Division should be contacted regarding any questions that are specifically related to filing tax and fee returns/forms.

6. Procedures and verifications must be performed to ensure that all liabilities to patrons are correctly accounted for and reconciled from the time of the temporary closure to the time of reopening, including but not limited to incremental progressive amounts, safekeeping/front money/wagering account balances, player tracking point balances, race and sports futures/unpays, payout receipts and wagering vouchers, etc.
7. As payout receipts and wagering vouchers may have expired during the temporary closure, licensees must take measures to pay these liabilities or extend the expiration dates for such liabilities to accommodate the period the property was closed. Consequently, the redemption period requirements of Regulations 6.110(11) and 6.110(12)(b) are administratively approved to be extended to 30 days after the Governor authorizes reopening of gaming operations. Furthermore, the revenue reporting requirements of Regulations 6.110(11) and 6.110(12)(b)(1) are also extended to 30 days after the Governor authorizes reopening of gaming operations. Additionally, the reporting requirement of Regulation 6.110(12)(b)(2) is extended to the quarter following the quarter the Governor authorizes reopening on gaming operations. Regardless of whether a licensee chooses to use these waivers or chooses to comply with the requirements of the regulations, the applicable tax forms that reflect monthly and/or quarterly payout receipt and wagering voucher activity must continue to be submitted.

Licensees must also ensure that other payments owed to patrons (e.g., winning sports tickets, etc.) are paid when submitted for payment. Any expiration dates

that such liabilities have, either through regulatory requirement (e.g., NGC Regulation 22.080(3)) or through a licensee's internal policy advised to patrons, must be extended to include the time period the property was closed.

8. The "cash on hand" bankroll requirement of NGC Regulation 6.150, as calculated using the Board's prescribed bankroll formula, is waived for a period of 7 days after the Governor authorizes the reopening of gaming operations. However, licensees who reopen are still expected to comply with the "next business day" funds requirement during this 7 day period. The Audit and Tax and License Divisions, as applicable, should be contacted for any questions regarding this administrative waiver.
9. An indication must be given as to whether the administrative waivers that were granted in the Board's March 17, 2020 *Procedures for Casino Closures and Changeovers Policy Memorandum* will be used. These waivers provided licensees with an additional 30 days for filing audited or reviewed financial statements (NGC Regulation 6.080) and the CPA /Internal Audit reports (NGC Regulation 6.090 (9) and (15)). If a request for extension is required beyond the 30 days, contact the Audit Division for information related to additional administrative extensions.

Due to COVID-19, the financial statements and the CPA/Internal Audit reports that are due during the first six months of 2020 are to be submitted to the Audit Division (NComprpts@gcb.nv.gov for Northern Nevada and Scomprpts@dcb.nv.gov for Southern Nevada). No hard copy filings will be required.

10. For the disposition of any progressive amounts pursuant to NGC Regulations 5.110(5)(c)(4) and 5.112(6)(d)(4), the disposition time requirements of NGC Regulations 5.110 and 5.112 do not begin until the Governor authorizes the reopening of gaming operations.
11. Amendments to the Internal Control System, if applicable, must be submitted within 30 days after reopening.
12. Upon reopening, licensees with a reserve requirement under NGC Regulation 5.225 or 22.040 must ensure that the maintained reserve complies with the requirements of these regulations or is in compliance with any active waivers that were previously approved by the Board. If an increase to the reserve is necessary, then the Audit Division must be provided with the original reserve agreement for the increase within 20 days of reopening. Any questions regarding these reserves should be directed to the Audit Division.
13. As the Minimum Internal Control Standards (Group I licensees) and Internal Control Procedures (Group II licensees) require licensees to perform certain monthly, quarterly and semi-annual procedures, it is possible that due to the mandated closure, licensees may have been unable to perform certain accounting, internal audit and CPA required procedures. If the temporary closure impeded a licensee's ability to perform certain required procedures, violations will not be cited.

Instead, those procedures will be administratively waived. Contact the Audit Division or the Tax and License Division, as applicable, if additional clarification is needed.

Licenses and club venue operators must be in full compliance with all applicable Surveillance Standards and the surveillance system and camera coverage should be checked by licensees to ensure proper functioning prior to the commencement of live gaming. Additionally, the DVR system used for surveillance should be tested to ensure:

- Full screen review
- Data with time and date superimposed
- 30 images per second
- Media player has necessary software to view images
- Watermark verification software

14. Upon reopening, licensees and club venue operators will be responsible for reviewing the list of expired gaming employee registrations for their property. Employees whose gaming registrations have expired during the closure may work for up to 30 days while they renew their registrations. The Enforcement Division will not take any regulatory action against licensees for expired gaming registrations, as long as all applicable renewal applications are submitted via the Board's online registration system within 30 days of the reopening date. This exemption is only for renewal applications. New registration applications must be submitted prior to commencing work in a gaming position.

If you have already terminated laid off or furloughed employees in the Board's system, and they subsequently return to work at your location at the time of reopening, the Board will offer a one-time option to administratively reinstate those employees at your location in our system. Please communicate any affected employees to the Enforcement Division at rgarcia@gcb.nv.gov. Employees must have been previously registered at your location, separated from service due to the COVID-19 closures, and must be reinstated within 60 days of your date of reopening. If you communicate the list of affected employees to the Board, you will not need to perform any transactions in the online registration system. The Board will reactivate those employees at your location, and they will show on your registered employee list in the online registration system the following day.

15. Verify that all new and modified gaming devices and associated equipment installed between the period of closure and reopening have been approved in accordance with NGC Regulation 14 prior to making the new or modified gaming device or associated equipment available to the public. Unapproved new or modified gaming devices and associated equipment must not be made available to the public.

16. For Club Venues:

- Club venues under the Board's authority will be allowed to reopen in compliance with any directive or guidance issued by the Governor's office and state and local health officials.
- Any registered club venue employee whose registration expired during the temporary closure will be allowed to work for up to 30 days after resumption of operations while they renew their application. This does not apply to new registrations.
- If you have already terminated laid off or furloughed employees in the Board's system, and they subsequently return to work at your location at the time of reopening, the Board will offer a one-time option to administratively reinstate those employees at your location in our system. Please communicate any affected employees to the Enforcement Division at rgarcia@gcb.nv.gov. Employees must have been previously registered at your location, separated from service due to the COVID-19 closures, and must be reinstated within 60 days of your date of reopening. If you communicate the list of affected employees to the Board, you will not need to perform any transactions in the online registration system. The Board will reactivate those employees at your location, and they will show on your registered employee list in the online registration system the following day. Licensees should conduct due diligence on recently terminated employees whose registrations have not expired.
- Surveillance inspections will not be necessary prior to reopening as long as the camera configurations have not changed and compliance with item #14 is met.
- If any changes were made to policies and procedures during the temporary closure, please forward the revised version to ops@gcb.nv.gov.

17. Licensees should verify with all other state and local government entities to ensure compliance with their specific reopening requirements. Additionally, licensees must comply with all prescribed local, state and federal COVID-19 health requirements. Further direction and requirements on these matters may be issued by the GCB as the situation evolves.

18. Any additional information not addressed in #1 - #18 above that a licensee considers relevant should also be included in the Reopening Plan that is submitted pursuant to this Policy Memorandum.

Policy Memorandum - Reopening Procedures

Page 6

Nevada Gaming Control Board Agents may be present to observe some or all of these procedures. The Board will coordinate Agent involvement with licensees, if Agent observation is to occur. Any questions regarding reopening procedures may be directed to the Board's Audit, Enforcement, Tax and License or Technology Divisions, as applicable.

Sincerely,

Terry Johnson, Esq.
Board Member

TJ/KC

cc: Sandra Douglass Morgan, Esq., Chairwoman
Phil Katsaros, Board Member

Exhibit 4

Exhibit 4

EXHIBIT G

**Declaration of Ihsan
Azzam, Ph.D, M.D., Chief
Medical Officer for Nevada**

EXHIBIT G

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11 Email: CNewby@ag.nv.gov

12 *Attorneys for State Defendants*

13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15 CALVARY CHAPEL DAYTON VALLEY

16 Plaintiff,

17 vs.

18 STEVE SISOLAK, in his official capacity
19 as Governor of Nevada, et al.,

20 Defendants.

Case No. 3:20-cv-00303-RFB-VCF

**DECLARATION OF IHSAN AZZAM,
PH.D, M.D., M.P.H., CHIEF MEDICAL
OFFICER FOR THE STATE OF
NEVADA, IN SUPPORT OF STATE
DEFENDANTS' RESPONSE TO
PLAINTIFF'S SUPPLEMENT**

21 I, IHSAN AZZAM, PhD, M.D., M.P.H., declare as follows:

22 1. I am over the age of 18 and a United States citizen. I know the following facts
23 of my own personal knowledge, and if called upon as a witness, I could and would testify
24 competently thereto.

25 2. This Declaration is in support of the State Defendants' Response to Plaintiffs'
26 Supplement and is attached thereto as **Exhibit G**.

27 3. I am the Chief Medical Officer for the State of Nevada.

28 4. As the Chief Medical Officer, I lead and coordinate Nevada's epidemiologic
response to disease outbreaks and emergency health threats.

5. Previously, I served as the State Epidemiologist for nearly fourteen years.

1 6. I earned my medical degree from Cluj University of Medicine in Romania in
2 1982 and completed my OBGYN residency in 1986. I also hold a Centers for Disease Control
3 and Prevention (CDC) Graduate Certificate in Epidemiology, Biostatistics and
4 Demography from the University of Seattle School of Public Health and Community
5 Medicine, and a CDC Chronic Disease Epidemiology Certificate from the Penn State
6 College of Medicine. At the University of Nevada, Reno, I completed my MPH in 2002 and
7 PhD in 2010. I have been the recipient of several awards, including the 2011 National
8 Sheppard Award for Excellence in Epidemiology.

9 7. I work for the Division of Public and Behavioral Health (“DPBH”), which is
10 part of Nevada’s Department of Health and Human Services (“DHHS”). Nevada
11 Department of Health and Human Services Health (DHHS)

12 8. I have been intimately involved with the statewide COVID-19 response. My
13 role is to oversee analysis of statewide data on COVID-19 cases and trends in disease in
14 disease morbidity and mortality. I am familiar with the Governor’s emergency declaration
15 and subsequent emergency directives.

16 9. The virus that causes COVID-19 is thought to spread mainly from person to
17 person, mainly through respiratory droplets produced when an infected person—even one
18 who exhibits no symptoms—speaks, coughs or sneezes. These droplets can land in the
19 mouths or noses of people who are nearby or possibly be inhaled into the lungs. The role of
20 other transmission pathways such as through aerosols that may travel long distances or
21 through contaminated surfaces has been suggested and is still being researched.

22 10. One of the aspects of COVID-19 that makes it difficult to prevent spread is
23 that it can be transmitted by a person who is asymptomatic.

24 11. COVID-19 can spread quickly. A person with COVID-19, on average, infects
25 approximately two to three people. Unchecked, COVID-19 spreads exponentially and over
26 10 transmission cycles, one person could be responsible for 1,024 other people contracting
27 the virus. Physical distancing interventions have been successful in reducing the number
28 of persons infected by each case and changing the exponential pattern of case increases.

1 That is why these interventions are so important for controlling COVID-19 in Nevada.
2 Physical distancing measures include staying home except for needing to address
3 important things such as picking up medications; and staying at least six feet away from
4 others when outside the home.

5 12. Spread is more likely when people are in close contact with one another
6 (within about six feet). COVID-19 is currently spreading in the community (community
7 spread) in many affected geographic areas. An area is experiencing community spread
8 when residents are becoming infected with the virus in community settings, and it is not
9 possible to identify the source of exposure in some cases.

10 13. In light of evidence of widespread COVID-19 transmission in communities
11 across the country, CDC recommends that people wear a cloth face covering to cover their
12 nose and mouth in the community setting. This is an additional public health measure
13 people should take to reduce the spread of COVID-19 in addition to, not instead of, physical
14 distancing, frequent hand cleaning, and other everyday preventive actions. A cloth face
15 covering is not intended to protect the wearer but may prevent the spread of virus from the
16 wearer to others. This would be especially important in the event that someone is infected
17 but is not aware of their illness and is not self-isolating. A cloth face covering should be
18 worn when people must go into public settings and especially if they expect to have
19 difficulty maintaining physical distancing, such as when going to the grocery store.
20 However, wearing a mask or frequently washing one's hands, will not prevent completely
21 the spread of the disease. Each of these measures contributes to reducing the risk of
22 transmission.

23 14. People with COVID-19 have had a wide range of symptoms reported – ranging
24 from mild symptoms to severe illness. A large number of people with COVID-19 have no
25 symptoms. People who have no symptoms can, however, still spread COVID-19. COVID-19
26 can cause severe disease, including death. Older adults and people of any age who have
27 serious underlying medical conditions are at higher risk for severe illness from COVID-19.
28

1 15. The purpose of the state's current health and safety rules is to protect
2 vulnerable people from infection with the coronavirus that causes COVID-19 (SARS-CoV-
3 2) and to reduce the spread of that virus in the community. By reducing community spread,
4 we can protect persons at increased risk of severe disease and prevent critical
5 infrastructure, particularly health care facilities, from being overwhelmed. As geographical
6 areas become less susceptible to being overwhelmed by a potential increase in community
7 spread and areas demonstrate the ability to test and trace consistent with relevant
8 guidelines, other health and safety rules may be promulgated to allow more sectors of the
9 economy to operate, based on risk factors those sectors pose to public health and safety.

10 16. Whenever a number of people interact outside the home, there is an increased
11 risk that COVID-19 may be transmitted. There have been multiple reports of sizable to
12 large gatherings such as sport events, concerts, religious services, choir practices, funerals,
13 and parties resulting in significant spread of COVID-19.

14 17. Based on my experience with infectious disease prevention, measures that
15 depend on individual behavior, such as mask wearing, are difficult to sustain and less
16 effective than systematic measures, such as canceling gatherings and curtailing activities
17 that increase the risk of transmission. I believe that in gatherings of large numbers of
18 people, it may be very hard to maintain physical distancing.

19 18. As noted earlier, the virus can be spread by people who are not showing
20 symptoms. Thus, people who gather in groups or near others (other than those with whom
21 they live) will not be able to know whether other individuals who are in close proximity are
22 carrying the virus. By gathering in large groups, and in close proximity to others,
23 individuals put themselves and others at risk. The risk appears to be increased where
24 groups of individuals are in close proximity for extended period.

25 19. Individuals attending large gatherings, including but not limited to the types
26 of events where there have prior instances of COVID-19 spreading, would be at increased
27 risk of disease and could be expected to increase the spread of COVID-19 in their
28 communities and any other communities they visit. When an individual is exposed to and

1 contracts the novel coronavirus at a large gathering, there is a high likelihood that he or
2 she will spread COVID-19 to other individuals in his/her community, and in some cases
3 perpetuate the infection rates across county lines. This spread could fan out into different
4 parts of the state, jeopardizing the hard work to contain COVID-19 that is going on in many
5 communities and placing a further strain on hospitals and other resources across the state.

6 20. While keeping six feet of separation and wearing masks can reduce the risk
7 of disease transmission, any gathering poses some risk. Asymptomatic and presymptomatic
8 patients can spread COVID-19 more than 6 feet (up to 12 feet) through coughing and
9 sneezing. Additionally, the virus can survive for significant time in the environment. This
10 is why the CDC recommends that large gatherings be cancelled.

11 21. Operations at work places pose a lower risk of transmission than in large
12 gatherings that have the purpose of engaging in a shared communal experience. In work
13 places workers often work independently or on small teams most of the time, social
14 interactions are typically brief and ancillary, precautions can be mandated easily because
15 of the employer/employee relationship, and contact tracing can be easier to carry out in the
16 case of an outbreak. Furthermore, places like restaurants are subject to stringent health
17 and safety guidelines that can mitigate transmission.

18 22. In-person worship services pose specific risks for disease transmission.
19 Statewide guidance has been issued regarding ways to reduce those risks. In addition, the
20 COVID-19 situation varies by locality in Nevada. The ability to reduce the risk of in-person
21 worship will depend on whether localities have attained sufficient testing, tracking,
22 hospital capacity, and infection rates that indicate epidemiological stability and an ability
23 to contain outbreaks if they occur.

24 I declare under the penalty of perjury under the laws of the United States that the
25 foregoing is true and correct to my personal knowledge.

26 DATED June 7, 2020

27 /s/ Ihsan Azzam
IHSAN AZZAM, Ph.D, M.D., M.P.H.
28 CHIEF MEDICAL OFFICER FOR THE STATE OF NEVADA