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REPLY TO FLORIDA

May 19, 2021

Via Electronic Filing

The Honorable Scott S. Harris
Clerk of the Court
Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543

RE: *Calvary Chapel of Bangor v. Mills*, No. 20-1346
Petitioners' Opposition to Request for Extension of Time to File Response
to Petition for Writ of Certiorari

Dear Clerk Harris:

Respondent Governor waited until the last days of her response period to waive any response to Petitioner's Petition, and now seeks another 30-day delay on top of that lengthy period. As explained herein, Respondent's tactic appears calculated to delay action on Petitioner's Petition until after the Court's summer break, and thus also delay Petitioner's right to emergency relief in the currently pending district court proceedings. The Clerk should deny the requested extension.

This Court has acted at least 10 times on a number of cases involving virtually identical and equally unconstitutional discriminatory restrictions on religious worship services during the COVID-19 pandemic. *See, e.g., Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020); *Agudath Israel of Am. v. Cuomo*, 141 S. Ct. 889 (2020); *South Bay United Pentecostal Church v. Newsom*, 141 S. Ct. 716 (2021); *Tandon v. Newsom*, 141 S. Ct. 1294 (2021); *Gateway City Church v. Newsom*, 141 S. Ct. 1460 (2021); *Harvest Rock Church, Inc. v. Newsom*, 141 S. Ct. 1289(2021); *Harvest Rock Church, Inc. v. Newsom*, 141 S. Ct. 889 (2020); *Gish v. Newsom*, 141 S. Ct. 1290 (2021); *High Plains Harvest Church v. Polis*, 141 S. Ct. 527 (2020); *Robinson v. Murphy*, 141 S. Ct. 972 (2020). In each of these instances, the Court either granted an emergency injunction pending appeal or granted certiorari, vacated the lower court's erroneous

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judgments, and remanded with instructions to follow this Court's clear teachings. The same should occur here.

Nevertheless, despite the abundant decisions from this Court within the last six months, the Governor seeks to further delay Petitioner's relief from this Court by requesting another 30 days to respond to Petitioner's Petition. The Petition raises issues of seminal importance to the First Amendment. Indeed, in a matter very similar to the issues presented in the instant Petition, this Court held that "[t]he restrictions at issue here, by effectively barring many from attending religious services, strike at the very heart of the First Amendment's guarantee of religious liberty. Before allowing this to occur, we have a duty to conduct a serious examination of the need for such a drastic measure." *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 68 (2020).

Respondent's unconstitutional and discriminatory restrictions have been ongoing for over an entire year, and Petitioner has been scratching and clawing for relief since May 5, 2020. All told, Petitioner has been subject to unconstitutional restrictions on its fundamental exercise of religious worship services for **379 days**. As this Court said in *Catholic Diocese*, even 7 and 13 days was too long to permit ongoing irreparable harm to fundamental First Amendment liberties. 141 S. Ct. at 67 ("There can be no question that the challenged restrictions, if enforced, will cause irreparable harm. 'The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.'" (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))). Respondent's requested further delay imposes irreparable harm on Petitioner by having to wait for final adjudication by this Court of these critical issues.

Respondent claims that Petitioner will suffer no prejudice by the granting of an extension, but this is simply untrue as a matter of law. As this Court said in *Tandon*, "even if the government withdraws or modifies a COVID restriction in the course of litigation, that does not necessarily moot the case." 141 S. Ct. at 1297. "And so long as a case is not moot, litigants otherwise entitled to emergency injunctive relief remain entitled to such relief where the applicants 'remain under a constant threat' that government officials will use their power to reinstate the challenged restrictions." *Id.* (citing *Catholic Diocese*, 141 S. Ct. at 68). Here, Petitioner remains under the current restrictions on their religious exercise, and the Governor continues to maintain the ability to reinstate her unconstitutional restrictions at any time.

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Critically, even while Petitioner's Petition is pending in this Court, Petitioner is still attempting to obtain preliminary injunctive relief in the district court, where Petitioner filed a renewed motion for preliminary injunction. However, at a status conference on May 17, 2021, the district court advised the parties that it was inclined to hold that motion in abeyance pending this Court's disposition of the Petition. Respondent then requested a 30-day extension from this Court. If granted, this extension will guarantee that this Court will not be able to review and act on the Petition prior to its summer break. This, in turn, will likely delay Petitioner's relief on the preliminary injunction in the district court by many months. The Clerk should not permit this apparent tactic to deprive Petitioner of timely relief.

For the foregoing reasons, Petitioner respectfully requests that Respondent's request for an extension be denied. In the alternative, this Court should – as it did in numerous other cases – issue an emergency writ of injunction pending review of the Petition.

Respectfully submitted,



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