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DEPARTMENT OF JUSTICE



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December 24, 2020

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

Re: *South Bay United Pentecostal Church, et al., v. Newsom, et al.* No. 20-746

Dear Mr. Harris:

We represent three of the respondents, Governor Gavin Newsom, Attorney General Xavier Becerra, and the Acting California Public Health Officer (who is currently Dr. Erica Pan), in the above-captioned matter. On November 24, 2020, petitioners South Bay United Pentecostal Church, et al. (South Bay), filed a petition for a writ of certiorari before judgment, seeking review of an October 15, 2020 order in which the district court had denied a request for a preliminary injunction with respect to California's then-operative public health restrictions on indoor worship. One day later, this Court granted an application for injunctive relief in *Roman Catholic Diocese of Brooklyn v. Cuomo*, No. 20A87, 592 U.S. ___ (Nov. 25, 2020), and enjoined New York's 10- and 25-person occupancy limits on indoor religious services pending disposition of an appeal and any timely petition for a writ of certiorari in that case. Shortly after the *Roman Catholic Diocese* decision, this Court considered another emergency application filed by plaintiffs who, like South Bay, are seeking to enjoin California's COVID-19 policies regarding indoor gatherings. See *Harvest Rock Church, Inc. v. Newsom*, No. 20A94, 592 U.S. ___ (Dec. 3, 2020). The Court construed the *Harvest Rock* application as a petition for a writ of certiorari before judgment, granted the petition, vacated the district court order denying a preliminary injunction, and remanded with instructions for the case to be remanded to the district court for further consideration in light of *Roman Catholic Diocese*. *Id.*¹

Following this Court's order in *Harvest Rock*, respondents promptly asked the court of appeals to "follow the same course as in *Harvest Rock*" in this matter, by "vacat[ing] the trial court's ruling denying injunctive relief with instructions that it entertain a renewed motion for interim relief in light of *Roman Catholic Diocese*." C.A. No. 20-55533, Dkt. 97 (Dec. 5, 2020). On December 8, the court of appeals accepted that request and issued an order "vacat[ing] the district court's October 15, 2020 order denying the motion for injunctive relief filed by South Bay" and "remand[ing] to the district court for further consideration of this matter" in light of *Roman Catholic Diocese* and *Harvest Rock*. C.A. No. 20-55533, Dkt. 101. The district court

¹ See also *High Plains Harvest Church v. Polis*, No. 20A105, 592 U.S. ___ (Dec. 15, 2020) (similar); *Robinson v. Murphy*, No. 20A95, 592 U.S. ___ (Dec. 15, 2020) (similar).

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ordered the parties to file briefs, on an accelerated schedule, addressing *Roman Catholic Diocese* and other relevant developments. D. Ct. Dkt. 78. After further briefing and factual submissions regarding California's current public health restrictions and recent epidemiological evidence, the district court held a hearing on December 18 regarding petitioners' renewed motion for a temporary restraining order or preliminary injunction. D. Ct. Dkt. 87. On December 21, the district court issued a reasoned decision denying South Bay's motion. D. Ct. Dkt. 92.

South Bay has since appealed that decision and filed an emergency motion for an injunction pending appeal. Consistent with the court of appeals' scheduling order, respondents filed their opposition to that motion this morning. *See* C.A. No. 20-56358, Dkt. 6, 9. The court of appeals has also ordered expedited briefing of the underlying appeal, which will be completed by January 11, 2021, and it has scheduled oral argument for January 15.

In light of these developments, respondents do not intend to file a brief in opposition to the petition for a writ of certiorari before judgment in No. 20-746 unless requested to do so by the Court.

Sincerely,

/s/ Samuel T. Harbourt

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Deputy Solicitor General

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