

No. 23-\_\_\_\_\_

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In The  
**Supreme Court of the United States**

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GODSPEAK CALVARY CHAPEL and ROB McCOY

*Applicants,*

v.

COUNTY OF VENTURA, GAVIN NEWSOM, *in his official capacity as the Governor of California* and ERICA PAN, M.D., *in her official capacity as Acting California Public Health Officer for Ventura County*

*Respondents.*

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**On Application for an Extension of Time to File a Petition for a Writ of Certiorari to the Supreme Court of the State of California**

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ADVOCATES FOR FAITH & FREEDOM  
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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Supreme Court Rule 29.6, Applicant Godspeak Calvary Chapel states that it has no parent corporation and that no publicly held company owns 10% or more of Applicant's stock.

To the Honorable Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

1. In accordance with this Court’s Rules 13.5, 22, 30.2, and 30.3, Applicants Godspeak Calvary Chapel and Rob McCoy (“Applicants”) respectfully requests that the time to file its petition for a writ of certiorari be extended for 30 days, up to and including June 15, 2023. The California Supreme Court entered its judgment on February 15, 2023. Absent an extension of time, the petition would be due on May 16, 2023. The jurisdiction of this Court is based on 28 U.S.C. 1254(1). This request is unopposed.

### **BACKGROUND**

2. This case presents substantial and important questions involving “arm of the state” jurisprudence. This Court’s review of the “arm of the state” doctrine is long overdue, and such review is needed to establish a clear, consistent standard for determining when an entity operates as an “arm of the state” status, especially when issues of public interest and First Amendment rights are implicated.

3. Applicants Godspeak Calvary Chapel (“Godspeak”) and Rob McCoy seek to hold Respondents accountable for enforcing unconstitutional COVID-19 public health orders, which sought to impermissibly restrict how and when the church could worship. The Ventura County Superior Court held that the County was entitled to Eleventh Amendment immunity as an arm of the state and sustained the County’s demurrers without leave to amend, despite the lack of a fully developed evidentiary record required for appellate review of a First Amendment case. The Second Appellate District of California affirmed the decision. The appeals court also denied a petition for rehearing. Petitioners then filed a petition with the California Supreme Court, which was also denied. Godspeak’s First Amendment rights to Free Exercise have been fully vindicated in this

Court several times over the course of the COVID-19 pandemic. Yet the state courts in California have allowed the offending county and its local health officer to escape liability as an alleged “arm of the state” entitled to Eleventh Amendment immunity in enforcing COVID-19 public health orders.

4. This Court has vindicated the Applicants’ position, holding similar COVID-19 public health orders unconstitutional. *See, e.g., South Bay United Pentecostal Church v. Newsom*, 141 S. Ct. 716 (2021). The lower court decisions allow the Respondents to evade accountability for violating the Applicants’ First Amendment rights.

5. The decisions also accentuate the wide split among federal circuit courts and other lower courts regarding how they apply the “arm of the state” doctrine. For example, the Second Appellate District of California’s decision conflicts with other federal court decisions in California refusing to extend state immunity to local counties for issuing similar COVID-19 public health orders. The split in California is representative of the larger split among federal circuit courts.

6. The inconsistency among courts in determining whether an entity operates as an “arm of the state” and the California Supreme Court’s endorsement of this confusion through its denial of petition for review warrants review, as will be further set forth in Applicant’s petition.

#### **REASONS FOR GRANTING AN EXTENSION OF TIME**

7. Applicant respectfully submits that a 30-day extension to the time within which to file a petition for writ of certiorari is necessary and appropriate for the following reasons:

8. Applicants’ counsel have been diligently preparing the petition for writ of certiorari. However, Applicants’ counsel, Robert Tyler and Mariah Gondeiro, have been otherwise engaged in pressing professional matters during the past few weeks and will continue to be engaged in such matters in the upcoming weeks, including but not limited to, preparing for trial in *Election Integrity*

*Project California, Inc. v. Mark Lunn, et. al*, Case No.: 56-2020-00540781-CU-MC-VTA.

Applicants' counsel will be traveling for this trial on May 14, 2023 and will be beginning this trial on May 16, 2023, the same day in which this petition would be due without an extension.

Applicants' counsel are unable to move the trial date.

9. An extension of time will help to ensure that these vitally important and complicated issues in this matter are presented to the Court clearly and thoroughly. This petition involves important public interest concerns and First Amendment rights. Such extension of time will enable Applicant's counsel to fully address these issues and prepare the petition.

10. Applicants submit that the requested extension of time would neither prejudice the Respondent nor result in undue delay in the Court's consideration of the petition, and that good cause exists to grant the requested extension.

#### **CONCLUSION**

11. For the foregoing reasons, Applicants respectfully request that an order be entered extending the time for filing a petition for writ of certiorari to and including June 15, 2023.

Respectfully Submitted,

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## CERTIFICATE OF SERVICE

I am employed in the county of Riverside, State of California. I am over the age of 18 and not a party to the within action. My business address is 25026 Las Brisas Road, Murrieta, California 92562.

**BY E-MAIL OR ELECTRONIC TRANSMISSION.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I transmitted copies of the above-referenced document(s) on the interested parties in this action by electronic transmission. Said electronic transmission reported as complete and without error.

Lisa Plank - Lisa.Plank@doj.ca.gov

Jaclyn Smith - jaclyn.smith@ventura.org

DATED: May 1, 2023

/s/ Robert H. Tyler  
Email: btyler@faith-freedom.com