No. 20A151

In the Supreme Court of the United States

RITESH TANDON; KAREN BUSCH; TERRY GANNON; CAROLYN GANNON; JEREMY WONG; JULIE EVARKIOU; DHRUV KHANNA; CONNIE RICHARDS; FRANCES BEAUDET; MAYA MANSOUR,

APPLICANTS,

v.

GAVIN NEWSOM; MATTHEW RODRIQUEZ; TOMÁS J. ARAGÓN; JEFFREY V. SMITH; SARA H. CODY.

RESPONDENTS.

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

REPLY IN SUPPORT OF EMERGENCY APPLICATION FOR WRIT OF INJUNCTION OR IN THE ALTERNATIVE FOR CERTIORARI BEFORE JUDGMENT OR SUMMARY REVERSAL

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TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT:

Whereas a certain Roman emperor would "post his edicts high on the columns so that they would be harder to read and easier to transgress,"[1] today's would-be autocrats need only perpetually update opaque websites and, during fast-moving litigation, constantly shift their official understanding of what those websites say. Consider what has occurred since this Application was filed: (1) the State has proclaimed that the Ninth Circuit's ruling (*in its favor*) "incorrect[ly]" parsed the gatherings restrictions as applied to political assemblies, meaning that Californians now have no earthly idea what kinds of gatherings are permitted; (2) the State, at least for present purposes, *no longer* reads its online PDFs to prohibit outdoor religious gatherings at the home, despite its repeatedly taking the opposite position in the lower courts; and (3) less than three hours after Applicants asked this Court to immediately enjoin the State from enforcing its three-household limit on their home-based religious gatherings, the State announced on its website that it intended to loosen those restrictions (though, unfortunately for Christians, not in time for Easter, their highest holy day of the year). While Applicants of course welcome any relief they can get, they cannot help but fear that this deep fog of legal uncertainty is merely

[1] Antonin Scalia, *The Rule of Law As A Law of Rules*, 56 U. Chi. L. Rev. 1175, 1179 (1989).

cover for the State's disparate treatment of religious practice.

Worse, the State's hastily adopted revisions smack of an effort to avoid this Court's review. So long as this litigation proceeded in the lower courts, where the State is accustomed to winning, the State steadfastly resisted Applicants' request for religious liberty. But as soon as Applicants filed here, the State professed to have a sudden change of heart, contending now that an injunction is unnecessary because the updated guidance will soon provide Applicants all the relief they seek. But as history demonstrates and as the State concedes, the guidance could again be revised at any time. The State need only point to a slight uptick in cases (a "fourth wave") or invoke the threat of "new variants" to justify renewed restrictions, even if there is no genuine threat to public health. Other than its callous disregard for the rights of religious believers, the only consistent feature of the State's year-long response to the pandemic has been its fearmongering. The State's assurance that "*at present*, there is no reason to think that they will be unable to continue hosting those gatherings going forward" is very cold comfort. Opp. 21 (emphasis added).

On the merits, the State defends its restrictions on the ground that private religious assemblies are not comparable to gatherings in barbershops, movie studios, buses, trains, salons and countless other secular venues where multiple people congregate together indoors in close proximity for extended periods. The State asserts that private indoor gatherings are riskier than any of these secular analogs, but the State has never provided *any* evidence supporting that proposition, despite having access to extensive contact-tracing data. And the State cannot create a meaningful

dissimilarity merely by *regulating* commercial activities differently than private gatherings, especially when it has failed to provide any reason why the health regulations imposed in commercial settings could not be applied equally.

With respect to outdoor Bible studies and worship, the State's opposition unwittingly demonstrates the arbitrary nature of its regulatory regime. For more than six months, the State has taken the position that outdoor religious gatherings at private residences are subject to the three-household limit.[2] Based on the *those* assertions, the district court found that the "the State's private gatherings restrictions … limit outdoor gatherings to three households or fewer." App. 121–22. The Ninth Circuit similarly believed that the Gatherings Guidance "limit[s] private indoor and outdoor gatherings to three households." App. 12; *id*. at 38 (Bumatay, J., dissenting) (finding that Applicants cannot hold "outdoor[]" religious gatherings). Yet after prohibiting Wong and Busch from holding backyard Bible studies for more than a year, including on consecutive Easters, the State *now* asserts that Applicants have been free to hold religious gatherings in their backyards all along. Opp. 17.

This dizzying about-face is as mystifying as it is exasperating. The State has had multiple opportunities to update its Gatherings Guidance so as not to cap the number of people who may attend backyard Bible studies or other house-church-style

[2] The State's opposition to Applicants' motion for preliminary injunction in the district court asserted that the "restrictions on indoor and outdoor gatherings in private homes are not underinclusive: they apply whether the gathering is for a reception, a meal, a book club, or a [B]ible-study." *Tandon v. Newsom*, No. 5:20-cv-07108, Dkt. 30 at 13 (N.D. Cal.); *id.* at 14 ("[R]estrictions on private outdoor gatherings are more properly compared to similar events—for example, different households gathering for Thanksgiving dinner . . . or more than three households meeting in a private backyard for a book club (also prohibited).").

gatherings. It took none of them. Instead, it told both the district court and Ninth Circuit that the guidance barred these gatherings because Wong and Busch's homes were not "houses of worship." *See*, *e.g.*, App. 157–58. That universal three-household limit on outdoor Bible studies is plainly indefensible given the broad exemptions for other types of outdoor activity. But instead of confessing error, Respondents ask this Court to ignore its previous litigation conduct. Allowing the State to get away with this game of hide the peanut would make a mockery of the bedrock "principle that ours is a government of laws, not of men." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 646 (1952) (Jackson, J., concurring). This Court should simply accept the State's new reading as a concession and enjoin it from enforcing those restrictions.

The State does not dispute that Applicants suffer irreparable harm every day that they are prohibited from holding their religious gatherings. Instead, the State argues that the Court should look the other way because Wong and Busch's rights will be violated for only a few more days (if the State is to be believed). But the violation of First Amendment rights for even a short time is irreparable harm, and here there is no guarantee that the State will not immediately reinstate its unconstitutional restrictions. To prevent the State from violating Applicants' constitutional rights one day more, this Court should issue an immediate injunction.

ARGUMENT

I. The Gatherings Guidance Violates The Free Exercise Clause

The State's orders are not neutral and generally applicable and therefore trigger strict scrutiny. The Gatherings Guidance limits private, religious gatherings

to no more than three households, even when held outdoors. App. 183, 190. But the State allows gatherings in much greater numbers at myriad other locations, including hair salons, businesses offering "personal care services," restaurants, gyms, retail stores, buses, and more. App. 183–89. Moreover, the State allows indoor cultural and wedding ceremonies in all counties in excess of the three-household cap. *Tandon v. Newsom*, No. 21-15228 (CA9) Dkt. 14 Exs. 2 & 4. A person could thus host a secular wedding inside her home with more than three households but could not host a Bible study of the same size. The orders clearly treat religious gatherings less favorably than similarly situated secular gatherings, subjecting them to strict scrutiny. *See Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 66–68 (2020).

In an attempt to justify its disparate treatment of religious gatherings, the State claims that its restrictions are based on the "risk [various activities] pose to public health," Opp. 4, and contends that Applicants have not demonstrated that in-home religious gatherings pose a similar health risk to these secular comparators, *id.* at 15. But home-based religious gatherings pose a similar (or even lesser) risk of spreading the disease even under *the State's own metrics.* According to the State, the risk of infection increases the larger the number of households a person interacts with, the closer the physical interaction, and the longer the interaction lasts. *Id.* at 14. Applicants wish to hold Bible studies where (1) the same eight to twelve people attend each meeting, App. 196, 200; (2) the attendees remain socially distanced, App. 197, 201; and (3) the meetings occur weekly for a few hours, *id*; *cf.* Opp. 6 n.6. Meanwhile, the State permits in-home gatherings with more attendees (weddings,

political events), allows businesses to open that enable many different people to use the same space (gyms, restaurants), and allows businesses to perform services involving close physical contact (providing facials, tattooing). App. 183–89. The State has provided *no evidence* that in-home religious worship poses a greater risk than such permitted activities. In fact, despite collecting contact tracing data for more than a year, the State has declined to publish any analysis evaluating the relative risks of different activities and settings. *See* 5-ER-966 ¶53.[3]

The State also insists that in-home gatherings are not comparable to commercial activities because the State "requires these 'public facing businesses' to 'implement extensive safety protocols' designed to minimize the risk of COVID transmission." Opp. 16. But the State cannot use its *own* disparate treatment of

[3] The State—like the majority below—chides Applicants for not providing a more thorough "record" to show that these activities pose comparable risk of SARS-CoV-2 transmission. *See* Opp. 11, 15. But this Court has not required detailed scientific data to support the proposition that two activities pose a comparable risk to the State's asserted interest. *See, e.g., Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 538–39 (1993); *Diocese of Brooklyn*, 141 S. Ct. at 66–67. Moreover, the record below does not support finding that private gatherings are necessarily more dangerous than those at public places. The declarations the district court cited, App. 117 (citing Watt Decl. ¶¶42–44; Rutherford Decl. ¶¶60, 76–77; Cody Decl. ¶¶34–35) simply state that removing face coverings, not socially distancing, spending long periods of time together, etc., increase the risk of transmission—not that people at private gatherings do not take these precautions or that people in public places always take these precautions. *See South Bay II*, 141 S. Ct. at 718 (Statement of Gorsuch, J.) (the State "errs to the extent it suggests its four factors are always present in worship, or always absent from the other secular activities its regulations allow"). And in some instances, the district court relied on no evidence at all that private gatherings are riskier than public gatherings. *See, e.g.,* App. 117 (simply asserting that "[a]t private gatherings, people often do not use face coverings," do not "maintain physical distancing[,] … or limit the number of people per square foot").

private religious gatherings and secular activities to argue that private religious gatherings are not similarly situated to those same secular activities. The difference in the risk posed by the activity must be inherent to the activity itself, not the result of the State's manufactured regulations. *See Diocese of Brooklyn,* 141 S. Ct. at 66–67; *South Bay United Pentecostal Church v. Newsom*, 141 S. Ct. 716, 718–19 (2021) (Statement of Gorsuch, J.). Nor has the State provided any evidence that Applicants are unable to implement public health measures to prevent the spread of COVID-19. And contrary to the State's assertion, Applicants have stated that they can and will employ numerous safety precautions at their religious gatherings, including social distancing, masks, handwashing sanitizer, thorough cleaning, and more. App. 197, 201, 204–05, 207. The State cannot justify treating otherwise similarly situated groups differently by imposing different sets of restrictions without explaining why it was reasonable to do so. *See South Bay II*, 141 S. Ct. at 718 (Statement of Gorsuch, J.) (recognizing that California has failed to explain why "limiting the number of people who may gather at one time is insufficient for houses of worship").

This disparate treatment is especially unjustifiable for outdoor activities. The State's own experts have opined that outdoor gatherings are less risky than indoor gatherings, *see* App. 59, yet the State's orders facially limit private, outdoor religious gatherings to only three households, while allowing countless individuals to gather *indoors* at myriad businesses. App. 183–85, 190–92; *Tandon*, No. 21-15228 Dkt. 14 Exs. 2 & 4.

The State, now speaking through its Solicitor General and a new Acting Attorney General, declares that Wong and Busch are free to host religious gatherings outdoors "without any limit on the number of attendees or households in attendance, so long as the hosts and attendees adhere to appropriate protocols." Opp. 17. This supposedly has been permitted "[s]ince the summer of 2020." *Id*. That would be news to the lower courts that unanimously believed Applicants were limited by the State's orders to no more than three households at their outdoor religious gatherings. *See, e.g.*, App. 12, 24–25, 38–40, 77, 80, 121–22. Moreover, although Applicants have consistently challenged the three-household limit on outdoor home-based religious gatherings, in nearly six months of litigation the State has never once, until now, taken the position that backyard religious gatherings are uncapped.[4]

While Applicants welcome the opportunity to exercise their faith at their home, this Court should reject the Acting Attorney General's sudden and novel "[m]id-litigation assurance[ ]" that, actually, Wong and Busch may hold uncapped outdoor gatherings at their homes as long as they adhere to the guidance for houses of worship. *West Alabama Women's Center v. Williamson*, 900 F.3d 1310, 1328 (11th Cir. 2018) (citing *Stenberg v. Carhart*, 500 U.S. 914, 940–41 (2000)). Aside from the questionable timing of this new argument, "[t]his Court's case law makes clear that

[4] By contrast, when Applicants challenged the State's gatherings restrictions as applied to outdoor political rallies, the State immediately clarified that outdoor political rallies—like "political protests"—were exempted and so stipulated that Plaintiff Tandon was allowed to host political events. 5-ER-1034–36. The State then revised its website to add "political protest[s]" to the list of exempted activities. 4-ER-818–19.

[this Court is] not to give the Attorney General's interpretative views controlling weight," and instead "normally follows lower federal-court interpretation of state law." *Carhart*, 500 U.S. at 940. "In this case, the two lower courts have both" held that the State's three-household limit on outdoor gatherings applies to Bible studies and house church-style worship meetings. *Id.*; App. 12, 24–27, 121–26. Moreover, "the Attorney General does not bind the state courts or local law enforcement authorities," leaving them free to prosecute Wong and Busch if they host such gatherings. *Carhart*, 500 U.S. at 940–41; *see also* Cal. Health & Safety Code §§ 120300, 120195, 131056. Finally, the Acting Attorney General's convenient interpretation "conflicts with the [orders'] language" and is internally contradictory. *Carhart*, 500 U.S. at 942. The orders exempt *places of worship*, cultural ceremonies, and wedding ceremonies. *See* App. 184; 4-ER-817–19. Bible studies and home-based communal worship clearly do not fall under these exemptions. If Bible studies were subject to the same gathering limits as "places of worship," then indoor Bible studies should also be exempted from the three-household limit. But the State does not suggest that private *indoor* religious gatherings are exempt. *See* Opp. 17–18.[5] Accordingly, the Court should ignore the

[5] The State's shifting interpretations of its own regulations have been so confusing that the Ninth Circuit was unable to pin down precisely what conduct the State prohibits. The motions panel determined that "the State's gatherings restrictions do not apply to [Plaintiff] Tandon's requested political activities" or the Gannons' indoor political gatherings. App. 028–29. But the State's answering brief stated that its restrictions "do not apply to Plaintiff Tandon's public rallies, [but] they do apply to all the private gatherings that Tandon and the Gannons seek to hold." *Tandon*, No. 21-15228 (CA9) Dkt. 25, at 38. Suffice it to say that the State's orders are "confusing," and the State should not be allowed to benefit from its overly "complex regime." *South Bay II*, 141 S. Ct. at 719 n.2 (Statement of Gorsuch, J.).

State's new interpretation of the Gatherings Guidance and enjoin the (obviously unconstitutional) rule it has been defending for the past six months.

The State contends that *Diocese of Brooklyn* does not apply here because the Gatherings Guidance does not facially target religious conduct. Opp. 18–19. But as even the Ninth Circuit panel majority recognized, "facial neutrality is not determinative," App. 13 (citing *Lukumi*, 508 U.S. at 534), and a law may violate the Free Exercise Clause where "regulations nonetheless 'treat religious observers unequally.'" *Id.* (citing *Parents for Privacy v. Barr*, 949 F.3d 1210, 1235 (9th Cir. 2020)). It is the State's unequal treatment of religious gatherings as compared to similarly situated secular gatherings that triggers strict scrutiny here. *See Diocese of Brooklyn*. *See* 141 S. Ct. at 66–67 (explaining that, because comparable secular activities "are treated less harshly than" religious ones, "the challenged restrictions are not 'neutral' and of 'general applicability' [and] they must satisfy 'strict scrutiny'").

Finally, to the extent that the State argues that only a *total* ban on religious worship could bring this case within the ambit of *South Bay II* and *Gateway City Church v. Newsom*, – S.Ct.–, 2021 WL 753575 (2021), that argument runs headlong into settled law. *See* Opp. 18–19. It takes only the "incidental effect of burdening a particular religious practice" to trigger a free-exercise analysis of the law's neutrality and general applicability. *Lukumi*, 508 U.S. at 531. The State concedes that the three-household limit burdens Wong and Busch's free exercise of their religion. Opp. 14–15; *see also* Application 18–20. The State's orders are thus subject to First

Amendment scrutiny. And just like the prohibition on indoor worship, California's three-household limit for religious gatherings "impos[es] more stringent regulations on religious [gatherings] than on many businesses." *South Bay* II, 141 S. Ct. at 717 (Statement of Gorsuch, J.). Thus, for the same reasons that California's ban on worship triggered strict scrutiny in *South Bay II*, its three-household restriction for religious gatherings is likewise subject to strict scrutiny.

The State does not even attempt to show that the Gatherings Guidance could satisfy that rigorous standard. Accordingly, if this Court concludes that strict scrutiny applies, it should hold the challenged restrictions unconstitutional.

II. The Equities Weigh Strongly In Favor Of Injunctive Relief

The State does not dispute (nor could it) that the deprivation of constitutional rights constitutes irreparable harm. Instead, the State contends that injunctive relief is unwarranted because Applicants will suffer only "limited" "harm" in the "remaining days before the current restrictions expire on April 15." Opp. 22. But the "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Diocese of Brooklyn*, 141 S. Ct. at 67 (citation omitted).

The other equitable factors also support an injunction. Perhaps recognizing how wrong its dire predictions were in *South Bay II*, the State this time concedes that there is no longer a public health emergency in California necessary to justify the constitutional restrictions imposed on Applicants. Opp. 7. ("COVID-19 cases ha[ve] fallen substantially relative to the winter months, and the number of vaccinated adults has grown rapidly."). Even that admission undersells the massive

improvement in the public health situation. On January 8, 2021, the seven-day average of confirmed cases per 100,000 in California was 112.6. Cal. Dep't of Pub. Health, *Tracking COVID-19 in California.*[6] On March 29, 2021—the most recent date for which the seven-day average is reported—that number had fallen to 5.1. *Id.* Hospitalizations have also dropped precipitously. On January 5, 2021, there were 22,821 people with COVID-19 hospitalized in the state. *Id.* By April 7, 2021, there were only 2,312. *Id.* In light of these numbers, Governor Newsom recently announced that the State will "'fully reopen' on June 15 so long as hospitalizations remain 'stable and low,' and all state residents 16 or older have access to a vaccine." Opp. 9. The equities thus overwhelmingly weigh in favor of an immediate injunction.

III. The State's Newly Proposed—And Suspiciously Timed—"Voluntary Cessation" Of Its Gatherings Guidance Does Not Make The Requested Injunction Any Less Necessary Or Urgent

California's brief closes with a song that this Court has heard before: "injunctive relief" is no longer "[ ]necessary" here, because—mere hours after this Application was filed—the State fortuitously announced plans to relax the challenged restrictions. Opp. 20–23.[7] This familiar coda has not improved with repetition.[8]

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[6] https://covid19.ca.gov/state-dashboard/ (last visited April 9, 2021).

[7] *See* Josh Blackman, *About Two Hours After Bible Worship Group Seeks Emergency Injunction, California Relaxes Guidance for April 15—After Easter, of Course*, The Volokh Conspiracy (Apr. 2, 2021 11:21 PM), https://tinyurl.com/jnw68x6 (reviewing metadata of new guidance PDF and concluding that the proposed change "wasn't planned in advance" but rather was drafted "in response to the imminent application").

[8] *See, e.g.*, *Diocese of Brooklyn,* 141 S. Ct. at 68 ("[I]t is clear that this matter is not moot" and "injunctive relief is still called for because the applicants remain under a constant threat."); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2019 n.1 (2017) ("The Department has not carried the 'heavy burden' of making 'absolutely clear' that

For one thing, the State's new guidance will not go into effect until at least April 15, so the irreparable harm unceasingly inflicted on Wong and Busch by the *current* regime persists. The anticipated updates to the State's COVID website on April 15 will not give Applicants a second of this time back. *See Diocese of Brooklyn*, 141 S. Ct. at 67–68. Immediate injunctive relief is still urgently needed.

More, the suspicious timing of the State's maneuver—seemingly "designed to insulate a decision from review by this Court"—is reason enough to disregard it. *Knox v. Serv. Emps. Int'l Union, Local 1000*, 567 U.S. 298, 307 (2012). It not only smacks of unsavory appellate gamesmanship, *see* Joseph C. Davis, Nicholas R. Reaves, *The Point* Isn't *Moot: How Lower Courts Have Blessed Government Abuse of the Voluntary-Cessation Doctrine*, 129 Yale L.J. Forum 325, 332 (2019) (explaining how governments use "mid-litigation change[s]" in laws or regulations "to moot a concerning case"), it also raises the specter of a quick reversion to the *status quo ante* as soon as there is no longer an imminent threat of an adverse ruling.

Yet "voluntary cessation of challenged conduct does not ordinarily render a case moot," since disposing of it would only "permit a resumption of the challenged conduct as soon as the case is dismissed." *Knox*, 567 U.S. at 307. After all, "[a] case 'becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party,'" and "[a]s long as the parties have a concrete interest, however small, in the outcome of the litigation"—and a well-grounded fear

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it could not revert to its policy of excluding religious organizations."); *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 719 (2007).

that the State would soon revert to the challenged conduct would give them just such an "interest"—their case remains live and their injuries redressable. *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (citations omitted). Because Applicants "remain under a constant threat" of having their right to free exercise infringed, "injunctive relief is still called for." *Diocese of Brooklyn* 141 S. Ct. at 68.

If it were "absolutely clear" that the restrictions on private religious gathering "could not reasonably be expected" to come back, perhaps the analysis would be different. *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (citation omitted). But if *anything* is absolutely clear about California's response to the virus, it is that "[t]he Governor regularly changes" his orders with little appreciation for the importance of religious exercise. *Diocese of Brooklyn*, 141 S. Ct. at 68; *accord Cassell v. Snyders*, 990 F.3d 539, 546 (7th Cir. 2021) (rejecting claim of mootness "[g]iven the uncertainty about the future course of the pandemic"); *Calvary Chapel Dayton Valley v. Sisolak*, 982 F.3d 1228, 1230 n.1 (9th Cir. 2020) (similar). And although there is no longer any genuine public health emergency in California, the State has consistently raised the threat of "new variants" as a justification for continued restrictions. *See Tandon*, No. 21-15228 Dkt. No. 25 at 63–64 (restrictions must persist because of "the presence of new and more dangerous and infectious variants of the COVID-19 virus"); *id.* at 1, 10, 12. Although there is no evidence that any of these variants are deadlier than earlier versions—cases, hospitalizations, and deaths continue to drop despite their presence in the State for several months—the State has shown itself willing to invoke illusory threats to justify

restrictions on constitutional liberties. So here, as in *Diocese of Brooklyn*, the possibility of further adjustments to online guidelines should not move the needle.

It would also be a different case if the State were simply *dropping* its argument that its current restrictions are constitutional, which would presumably cause them to make the new guidelines effective immediately. It is instead doggedly "defend[ing] the decision below on the merits." *Knox*, 567 U.S. at 307. In fact, just days ago, the State filed a brief in the Ninth Circuit wholeheartedly embracing the current restrictions on Wong and Busch's house-church gatherings and Bible studies. *Tandon*, No. 21-15228 Dkt. 25 at 31–45. The State's views on what it may do to combat the virus have not changed.

The State cites *Danville Christian Academy, Inc. v. Beshear* 141 S. Ct. 527 (2020), in support of its quasi-mootness argument. Opp. 22–23. But the challenged order in that case was set to "expire[]" the week applicants had filed their emergency appeal. *Danville*, at 527. Here, the State did not change the Gatherings Guidance until *after* Applicants sought relief in this Court. And although "the State has announced plans to terminate … restrictions on gatherings entirely" by this summer, Opp. 21, "one could be forgiven for doubting its asserted timeline" since the soon-to-change orders have effectively "been in place since" March 2020. *South Bay II*, 141 S. Ct. at 720 (Statement of Gorsuch, J.).

CONCLUSION

Applicants request that the Court enjoin the State from barring Applicants' Bible studies and worship gatherings at their homes in excess of three households.

Respectfully submitted,

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