

No. 25-703

In the Supreme Court of the United States

CALVARY CHAPEL SAN JOSÉ, ET AL.,

PETITIONERS,

v.

CALIFORNIA, ET AL.,

RESPONDENTS.

On Petition for a Writ of Certiorari to the United
States Court of Appeals for the Sixth Circuit

**BRIEF OF *AMICUS CURIAE* PACIFIC JUSTICE
INSTITUTE IN SUPPORT OF PETITIONERS**

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INTEREST OF AMICUS¹

The Pacific Justice Institute (PJI) is a non-profit legal organization established under Section 501(c)(3) of the Internal Revenue Code. Since its founding in 1997, PJI has advised and represented in court and administrative proceedings hundreds of individuals, businesses, and religious institutions, particularly in the realm of First Amendment liberties. During the pandemic, PJI assisted scores of California religious congregations that were subject to closure. Of the many pandemic-related lawsuits, PJI litigated a case in Santa Clara County, California, representing five churches which were subjected to the same unconstitutional restrictions as the Petitioner, Calvary Chapel San José. *Gateway City Church v. Newsom*, 141 S. Ct. 1460 (2021). PJI thus has extensive knowledge regarding the legal challenges in California that houses of worship faced during the pandemic.

SUMMARY OF ARGUMENT

“I don’t feel comfortable being in that position of saying, ‘You know, your constitutional rights don’t really matter right now,’ but I’ve had to. Right now we’re putting parts of the Constitution on hold. We really are. Freedom of assembly. Right to practice religion.”

¹ No counsel for any party authored this brief in whole or in part. No person or entity other than *Amicus* and their Counsel made a monetary contribution intended to fund the preparation or submission of this brief. Timely notice was given to all parties per S. Ct. Rule 37.

These are the chilling words of Santa Clara Deputy County Counsel, Angela Alvarado, as quoted in the New York Times.² COVID-19 made citizens sick and, in a small percentage of cases, even resulted in loss of life.³ But the state and local government suspension of the U.S. Constitution endangered the soul of the Republic.

Badgered and beleaguered houses of worship sought relief in the California courts to restore loss of freedoms. Instead of providing a refuge from the disgorgement of constitutional rights, these courts enabled it. Your *Amicus* will provide a brief overview of a selection of the most prominent of these cases.

ARGUMENT

I. During the pandemic era, California courts ruled consistently against religious institutions and people of faith, often despite clear and countervailing direction from this Court.

Our constitutional system places the free exercise of religion in a prominent place. Enumerated in the First Amendment, it represents the “nation’s fundamental commitment to religious liberty.”

² Rusch and Smith, *How Do You Enforce a Law That Tramples the Land of the Free?*, NEW YORK TIMES (May 12, 2020).

³ “On average, about 98.2% of known COVID-19 patients in the U.S. survive.” Alexandra Benisek, *Coronavirus Recovery*, medically reviewed by Zelpah Sheikh, MD, WEBMD (Dec. 10, 2024) (available at <https://www.webmd.com/covid/covid-recovery-overview>).

McCreary Cty. v. ACLU, 545 U.S. 844, 881 (2005) (O'Connor, J., concurring). The reasons for this are well known to this Court and outside of the scope of this brief. Despite the importance of religion to the survival of the Republic, during the pandemic, courts in California could not bring themselves to give houses of worship and people of faith the benefit of the doubt. Space does not allow for an exhaustive review of those decisions. Thus, this brief will provide a limited sampling of six federal cases.⁴

Before that, a bit of context relevant to the Petitioner, Calvary Chapel San José, is helpful.

On August 11, 2020, the Santa Clara County Board of Supervisors met and passed an “urgency ordinance”⁵ giving extraordinary powers to health officials. As discussed in this brief, it is a matter of

⁴ Most cases brought by houses of worship challenging pandemic restrictions on religious assembly were brought in federal court. In addition to the cases discussed in the Petition, there are two state appellate court cases that your *Amicus* has found—both unpublished. *Godspeak Calvary Chapel v. Cty. of Ventura*, No. B315027, 2022 Cal. App. Unpub. LEXIS 6531 (Oct. 27, 2022) (sustaining demurrer to church lawsuit challenging pandemic health orders); *Cty. of L.A. v. Superior Court*, No. B307056, 2020 Cal. App. Unpub. LEXIS 7568 (Aug. 15, 2020) (issuing stay to allow county to enforce pandemic health order to prevent indoor church services).

⁵ Ordinance No. NS-9.291, “An Uncodified Urgency Ordinance of the Board of Supervisors of the County of Santa Clara Relating to the Enforcement of Public Health Orders and Other Laws Related to the COVID-19 Pandemic, Providing for Administrative Fines, and Declaring the Urgency Thereof,” (available at <https://publichealth.santaclaracounty.gov/diseases/covid-19/ordinance-no-ns-9291>).

both record and precedent that public health officials’ powers to limit assemblies—as applied to houses of worship—could not be reconciled with the Religion Clauses of the First Amendment. This Court did not have an opportunity to review other core constitutional provisions that were cast aside under color of law. Here is a summary of some of the provisions of the Urgency Ordinance that the Petitioner fell under during the pandemic:

- The Urgency Ordinance covered houses of worship, i.e., “Business means any for-profit, non-profit, . . . corporate entity, organization . . . regardless of the nature of the service, the function it performs, or its corporate or entity structure.”⁶
- Churches were subject to warrantless searches.⁷
- A false written or oral statement made to an Enforcement or Hearing Officer regarding the subject of investigation, notice of violation, or hearing was a misdemeanor.⁸
- Despite being subject to criminal penalties, no Miranda warnings were given.⁹
- Arrests could be made without a warrant.¹⁰

⁶ Ordinance No. NS-9.291 § 2(b).

⁷ *Id.* at § 4(b).

⁸ *Id.* at § 4(d).

⁹ *Id.*

¹⁰ *Id.* at § 4(e); Santa Clara County Ordinance Code § A18-32.

- The accused were subject to criminal, civil, and administrative enforcement.¹¹
- Administrative fines for prohibited assemblies were assessed each day at \$2,500 per day for the first offense and \$5,000 per day for a subsequent citation, including days when churches were not assembling.¹² This far exceeded criminal penalties which were only \$1,000.
- An appeal was before the County rather than before an independent court.¹³
- There was no right to a jury.¹⁴
- In hearings the burden of proof was only by a preponderance of evidence, even though administrative fines dwarfed criminal penalties.¹⁵
- Rules of evidence were waived enabling the County to bring in hearsay evidence.¹⁶
- There was no right for the accused to face an accuser. Though on appeal the accused had the right to call witnesses,¹⁷ the County codified keeping the identity of the accuser confidential.¹⁸

¹¹ Ordinance No. NS-9.291 § 1(c) and § 5.

¹² Santa Clara County Ordinance Code § A18-42.

¹³ Ordinance No. NS-9.291 § 7(a)(10).

¹⁴ *Id.*

¹⁵ *Id.* at § 8(f).

¹⁶ *Id.* at § 8(e).

¹⁷ *Id.*

¹⁸ *Id.* at § 9.

By using the pandemic as a justification for suppression of the Fourth, Fifth, and Eighth Amendments, it was but a small step for state and local governments in California to then gravely restrict the First Amendment rights of houses of worship. Regrettably, courts in California then aligned themselves with the suspension of constitutional rights of churches, such as Calvary Chapel San José. Although this Court found it necessary to step in and realign pandemic restrictions on religious assemblies with the Constitution, the Respondents in this case still seek to extract punishment from Calvary Chapel San José. Because this case is of great importance, your *Amicus* proffers that the Petition should be granted.

1. Early in the pandemic, California enacted several restrictions on public gatherings including limiting attendance at places of worship to 25 percent of building capacity or a maximum of 100 attendees. Pre-pandemic, South Bay Pentecostal Church held three to five services a week attracting 200 to 300 congregants per meeting in its sanctuary located in Chula Vista, California. The church sanctuary seats 600. *S. Bay United Pentecostal Church v. Newsom*, 959 F.3d 938, 940 (9th Cir. 2020) (Collins, J. dissenting). Because the restrictions on assembly use burdened the religious exercise of South Bay, suit was brought and a motion for preliminary injunction filed. The district court denied the motion and in a split decision the two judges in the majority sitting on the Ninth Circuit panel ruled against South Bay reasoning 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 939.

As a result of this decision, South Bay remained largely closed to worshippers.

2. Harvest Rock Church operated multiple campuses in California, including in the cities of Pasadena, Los Angeles, Irvine, and Corona. Harvest Rock’s theological position is that they must assemble for worship, in-person, as a critical requirement of both obedience to the Bible and fulfillment of the church’s fundamental purpose, and to do so even more in times of peril and crisis. In addition to church campuses, Harvest Rock meets in small group homes to worship; that worship includes singing.

These worship gatherings caught the attention of officials from the City of Pasadena who sent a cease-and-desist order due to violations of pandemic health restrictions on assemblies. Harvest Rock brought suit and sought a preliminary injunction.

The State defendants presented the opinion of an expert, Dr. James Watt, in opposition to Harvest Rock’s motion. In a declaration, Dr. Watt declared that the State determined “church attendance to be particularly risky.” The district court denied the requested preliminary injunctive relief (*Harvest Rock Church v. Newsom*, No. CV 20-06414-JGB-(KKx), 2020 U.S. Dist. LEXIS 160347 (C.D. Cal. Aug. 12, 2020)), and the Ninth Circuit affirmed with one dissent (*Harvest Rock Church, Inc. v. Newsom*, 977

F.3d 728, 734 (9th Cir. 2020) (O’Scannlain, J., dissenting)).

The majority ruled against Harvest Rock finding that the State’s pandemic restrictions do not “accord comparable secular activity more favorable treatment than religious activity[,]” applying the “same restrictions to worship services as they do to other indoor congregate events, such as lectures and movie theaters.” *Id.* at 730. In response, Judge O’Scannlain noted that the restrictions applicable to places of worship “do not apply broadly to all activities that might appear to be conducted in a manner similar to religious services.” *Id.* at 734.

This Court vacated the district court’s denial of the preliminary injunction and remanded the case to the Ninth Circuit for further consideration in light of *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020). *Harvest Rock Church v. Newsom*, 141 S. Ct. 889 (2020).

3. *South Bay II* – A year into the pandemic, California’s Governor Newsom continued to modify public health restrictions, changing several requirements. The different and further restrictions included a limit on indoor worship services to 25 percent of building capacity or 100 people, whichever is fewer. The restrictions also forbid group singing and chanting indoors. South Bay’s Bishop Hodges explained that “singing is at the heart of our worship services, and comprises 25-50% of our typical Pentecostal worship gathering experience at Church.” *S. Bay United Pentecostal Church v. Newsom*, 494 F. Supp. 3d 785, 790 (S.D. Cal. 2020). In documents filed

in support of a motion for preliminary injunction, Bishop Hodges further declared that “[i]n a Pentecostal Church worship service, everyone is instructed and expected to sing praise to God, just as everyone is instructed and expected to pray to God. In our worship services, praying, singing, and praising God is not for spectators, it is for participants.” *Id.* at 790-91. California remained tone deaf to South Bay’s religious needs.

South Bay and California officials submitted competing expert declarations. In reviewing expert opinions, the district court ruled in line with all other California courts, consistently giving the government’s expert more weight than experts put forward by religious congregations. *Id.* at 797-802.

Ultimately this Court ordered a partial grant of the application for injunctive relief. *South Bay II*, 141 S. Ct. 716 (2021). In frustration, Justice Gorsuch wrote, “Today’s order should have been needless; the lower courts in these cases should have followed the extensive guidance this Court already gave.” *Id.* at 719 (Gorsuch, J., concurring).

4. Four pastors and a congregant from Southern California churches sought injunctive relief against California officials due to pandemic restrictions on worship. The plaintiffs sought to participate in congregate worship using the same mitigation tools that the State allowed for a large variety of secular gatherings.

The district court ruled against these religious practitioners finding that courts give “greater leeway”

to acts of an executive in a national emergency. But even setting that aside, the district court supported the government over the faithful “under traditional constitutional analysis.” *Gish v. Newsom*, No. EDCV 20-755 JGB (KKx), 2020 U.S. Dist. LEXIS 74741 (C.D. Cal. Apr. 23, 2020). The district court admitted that “[u]ndoubtedly, the Orders—and the similar orders in effect around the country—restrict the rights and freedoms normally enjoyed by citizens.” *Id.* at *13. In terms of traditional analysis, the district court wrote, “If the state applies the same rules to in-person religious gatherings as it does to grocery stores, people will get sick and die from attending religious gatherings just as they are dying from working in grocery stores.” *Id.* at *19.

Once again, this Court vacated the district court’s order and remanded the case to the Ninth Circuit for further consideration based on *South Bay II*. *Gish v. Newsom*, 1414 S. Ct. 1290 (2021).

5. Your *Amicus* turns to *Gateway City Church v. Newsom*. Because that case occurred during the same time period when officials levied fines against Calvary Chapel San José, and in the same County where that church sits, this section provides additional detail which sheds light on the current Petition.

Santa Clara County enacted a restriction that placed prohibitions on indoor gatherings under a four-tier framework. Though County public health officials constantly changed the “tiers” and even what the scope of a given tier was, at the time the district court ruled on the motion for a preliminary injunction, gatherings at “political events, weddings, funerals,

worship services, movie showings, [and] cardroom operations” were prohibited indoors, and outdoor gatherings were permitted up to 200 people. *Gateway City Church v. Newsom*, 516 F. Supp. 3d 1004, 1011 (N.D. Cal. 2021). Although health officials frequently changed the pandemic rules for restrictions on various categories of entities, houses of worship always appeared on the list of the dangerous, the unessential, and the unwanted.

Five churches (herein collectively “Gateway”)—forced to lock out their congregations for worship for the better part of a year—brought suit to challenge the California and Santa Clara County restrictions. In their motion for a preliminary injunction, Gateway brought to the fore gates at airports as comparators. This included the San José Mineta International Airport owned by the City of San José and located in Santa Clara County where Gateway ministered. Hundreds of persons sit or stand at a gate for approximately an hour waiting to board flights. This wait at the gate closely approximates a church service. *Id.* at 1019-1020.

The parties submitted competing declarations for experts. For example, Gateway brought in Jayanta Bhattacharya, M.D., Ph.D. who was a professor of medicine at Stanford University.¹⁹ But consistent with every other court in California, the district court sided with government experts. *Id.* at 1020-21. The uncomfortable truth is that no matter the credentials, experience, or laurels of experts brought by houses of worship or people of faith, they

¹⁹ At the time of this writing, Dr. Bhattacharya serves as the Director of the National Institutes of Health.

were never good enough. West Coast courts consistently sided with government experts in challenges to pandemic restrictions. Your *Amicus* has not found a reported pandemic decision in California where a court did not defer to government experts.

The district court denied the motion for preliminary injunction regarding the indoor prohibition. Days later, this Court issued an order in *South Bay II* after the district court issued an order denying a request for a preliminary injunction against the 0 percent capacity restriction on houses of worship by both the State and County defendants. Gateway submitted a notice of the recent decision in *South Bay II* to supplement an emergency motion in the district court for an injunction pending interlocutory appeal. The district court granted that motion as to both the State and County defendants requiring them to allow the Churches to meet at 25 percent capacity which was consistent with this Court's order in *South Bay II*. The State defendants complied with this Court's order based on *South Bay II*, allowing houses of worship to meet at 25 percent capacity.

But the next day the County issued a public health order allowing indoor worship services at only 20 percent capacity. The little reprieve that Gateway received lasted only forty-eight hours. That same day the County filed a motion seeking reconsideration; this motion was granted by the district court the following evening. The next day, the County rescinded its 20 percent gathering rule for places of worship and set them back to **0 percent capacity** for indoor worship services.

Thus, in a state stretching nearly 800 miles, all houses of worship were allowed to meet at 25 percent capacity. The lone exception was Santa Clara County where there remained a 0 percent capacity allowance for indoor worship services. Hence, not only Gateway but also Petitioner Calvary Chapel San José found itself stuck in the only place where they could not worship indoors. The primary takeaway is that Santa Clara County took extraordinary steps to circumvent this Court’s rulings while the ink was still drying on the *South Bay II* order. Not only that, both the district court and the Ninth Circuit motions panel could not bring themselves to rule for houses of worship.

Tellingly, upon Gateway’s emergency application for writ of injunction, this Court granted relief, writing, “The Ninth Circuit’s failure to grant relief was erroneous. This outcome is clearly dictated by this Court’s decision in *South Bay United Pentecostal Church v. Newsom*, 592 U.S. ____ (2021).” *Gateway City Church v. Newsom*, 141 S. Ct. 1460 (2021).

6. California also limited religious gatherings in homes to three households during the pandemic but did not require comparable secular activities to be limited to three households. *Tandon v. Newsom*, 517 F. Supp. 3d 922, 939 (N.D. Cal. 2021). Unlike the other cases, the *Tandon* plaintiffs did not include a house of worship. Instead, there were ten individual plaintiffs, which included five small business owners, a political candidate, two other persons wishing to meet to discuss political and policy issues, and two people who have home Bible studies and prayer

meetings. *Id.* at 945-46. This Court considered the claims of these latter two persons. *Tandon v. Newsom*, 593 U.S. 61 (2021).

Like the other cases discussed above, the district court accepted the opinions of the government’s experts over plaintiff-experts and denied the plaintiffs’ motion for preliminary injunctive relief. *Tandon*, 517 F. Supp. 3d at 981. A divided Ninth Circuit panel affirmed the lower court. *Tandon v. Newsom*, 992 F.3d 916 (9th Cir. 2021). The dissenting judge wrote, “The rights enshrined by the Constitution persist in times of crisis and tranquility.” *Id.* at 930 (Bumatay, J., dissenting).

An exasperated Judge Bumatay observed that courts are no longer writing on a blank slate. “Just last month, the Supreme Court corrected us in *three* separate cases—each time enjoining portions of California’s emergency restrictions on Free Exercise grounds.” *Id.* at 931 (citing *South Bay II*, *Harvest Rock*, and *Gateway*) (emphasis in original).

In an order granting the emergency application for writ of injunction, this Court wrote, “[G]overnment regulations are not neutral and generally applicable . . . whenever they treat *any* comparable secular activity more favorably than religious exercise.” *Tandon v. Newsom*, 593 U.S. at 62 (emphasis in original). The italicization of “any” was this Court shouting at the Ninth Circuit. In the same spirit, the last paragraph of the order read in part:

This is the fifth time the Court has summarily rejected the Ninth Circuit's analysis of California's COVID restrictions on religious exercise. See *Harvest Rock Church v. Newsom*, 592 U.S. ____ (2020); *South Bay*, 592 U.S. at ___, ; *Gish v. Newsom*, 592 U.S. ____ (2021); *Gateway City*, 592 U.S. ____ (2021). It is unsurprising that such litigants are entitled to relief. California's Blueprint System contains myriad exceptions and accommodations for comparable activities, thus requiring the application of strict scrutiny.

Tandon, 593 U.S. at 64.

The essence of the matter is that Calvary Chapel San José practiced its faith within the rightful parameters of the First Amendment. Yet even now government officials continue to grasp at a \$1.2 million windfall when they were the violators of our nation's most cherished liberties. This Court should not reward them.

CONCLUSION

Amicus requests that this Court grant Calvary Chapel's Petition.

Respectfully submitted this fifteenth day of
January 2026,

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