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23 **Pro hac vice application forthcoming*

24 **UNITED STATES DISTRICT COURT**
25 **DISTRICT OF NEVADA**

26 CALVARY CHAPEL DAYTON VALLEY,

27 *Plaintiff,*

28 v.

STEVE SISOLAK, in his official capacity as
Governor of Nevada; AARON FORD, in his
official capacity as Attorney General of
Nevada; FRANK HUNEWILL, in his official
capacity as Sheriff of Lyon County,

Defendants.

Case No.:

**VERIFIED COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1
2 1. This action challenges Governor Steve Sisolak’s emergency orders
3 prohibiting churches and other places of worship from holding in-person worship
4 services of ten or more people, even when such services could be held in accordance
5 with social distancing and public health guidelines (the “Church Gathering Ban”).

6 2. For over two months, Calvary Chapel Dayton Valley (the “Church”)
7 has been unable to hold an in-person worship service due to Covid-19 and the
8 Governor’s Church Gathering Ban. The Church has patiently waited for the
9 Governor to restore its First Amendment freedoms, trusting that the Governor
10 would prioritize constitutional rights and allow churches to resume in-person
11 worship services at the earliest opportunity.

12 3. But that trust has been broken. Instead of prioritizing religious
13 freedom, the Governor has moved “non-essential” secular businesses and activities
14 to the front of the line and pushed churches towards the back. Incredibly, the
15 Governor has allowed restaurants and food establishments to resume in-person, on-
16 site dining at 50% capacity, allowed all retail establishments to open at 50%
17 capacity, and has thrown open the doors of nail care salons, hair salons, and barber
18 shops—businesses that the Governor’s own orders say “promote extended periods of
19 public interaction where the risk of [Covid-19] transmission is high.” In addition,
20 there are numerous other exceptions to the Governor’s gathering restrictions.

21 4. Yet the Governor insists on maintaining the Church Gathering Ban,
22 refusing to allow churches and places of worship to open their doors to ten or more
23 people under any circumstance.

24 5. Regardless of the justifications the Governor may think he has for this
25 disparate treatment, they cannot survive constitutional scrutiny. Under the Free
26 Exercise Clause, a law is not generally applicable when it “fail[s] to prohibit
27 nonreligious conduct that endangers” the government’s interest “in a similar or
28

greater degree” than the prohibited religious conduct. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 542 (1993). That is exactly what the exemptions under the Governor’s orders do.

6. Indeed, under the Governor’s orders, large numbers of people in Clark County can gather for a similar amount of time as a church service at restaurants, food establishments, non-essential retail establishments, nail salons, hair salons, and barber shops, but it is illegal for the Church—which is located in rural Lyon County—to hold in-person services with ten or more people.

7. This is unconstitutional, and it makes no sense. As of May 20, 2020, Carson City Health and Human Services reports that Lyon County has only 16 active cases of Covid-19. *See* Lyon County Covid-19 Data, attached as **Exhibit 1**. With a population of approximately 57,510, that means the per capita rate of active Covid-19 infections in Lyon County is approximately 0.028%.

8. Consistent with its religious beliefs, the Church plans to resume in-person worship services on Sunday, May 31, and has developed comprehensive social distancing and health and safety protocols to govern those services. Despite these health and safety measures, however, the Governor’s Church Gathering Ban threatens the Church with criminal and civil penalties.

9. Without a temporary restraining order and injunction, the Church will face criminal and civil penalties for assembling and worshipping God. A temporary restraining order and injunction are therefore needed to preserve the Church’s constitutional rights.

JURISDICTION AND VENUE

10. This civil rights action raises federal questions under the United States Constitution, specifically the First and Fourteenth Amendments, and under federal law, particularly 42 U.S.C. § 1983.

11. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343.

12. This Court has authority to grant the requested declaratory relief under 28 U.S.C. §§ 2201 and 2202, the requested injunctive relief under 28 U.S.C. § 1343, and reasonable attorney's fees and costs under 42 U.S.C. § 1988.

13. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in this district and Defendants reside in this district.

PARTIES

14. Calvary Chapel Dayton Valley (the "Church") is a nonprofit church organized exclusively for religious purposes within the meaning of § 501(c)(3) of the Internal Revenue Code. The Church is in Dayton, Nevada (Lyon County).

15. Defendant Steve Sisolak is the Governor of Nevada. Governor Sisolak is responsible for issuing and enforcing the Church Gathering Ban. He is sued in his official capacity only.

16. Defendant Aaron Ford is Nevada's Attorney General. Attorney General Ford is authorized to enforce and prosecute violations of the Church Gathering Ban. He is sued in his official capacity only.

17. Defendant Frank Hunewill is the Sheriff of Lyon County. As Sheriff of Lyon County, Defendant Hunewill has the power, both personally and through his subordinates, to enforce the Church Gathering Ban. He is sued in his official capacity only.

FACTS

Calvary Chapel Dayton Valley

18. Calvary Chapel Dayton Valley has operated as a Christian church in Dayton, Nevada since February 5, 2006.

1 19. The Church believes that the Bible is the inspired Word of God and
2 infallible rule of faith and practice.

3 20. Thus, the Bible is the foundation upon which the Church operates and
4 is the basis on which it is governed.

5 21. The Church believes, among other things, that the Bible commands
6 Christians to gather together in person for corporate prayer, worship, and
7 fellowship and that such assembly is necessary and good for the Church and its
8 members' spiritual growth.

9 22. Consistent with that belief, the Church's mission and purpose is: (1) to
10 continue steadfastly in the apostles' doctrine and fellowship, in the breaking of
11 bread, and in prayers; (2) to worship God the Father, Son, and Holy Spirit; (3) to
12 build up the Church of Jesus Christ through the teaching of the Word of God and
13 the ministry of the Holy Spirit; and (4) to persuade men and women to repent and
14 confess Jesus Christ as Lord.

15 **The Church's Response to Covid-19**
16 **and Plan to Resume In-Person Services**

17 23. In response to federal, state, and local guidance at the beginning of the
18 Covid-19 outbreak—but before any local or state order prohibited in-person
19 gatherings—the Church voluntarily adopted rigorous social distancing and health
20 safety measures for its services.

21 24. In fact, immediately after the Governor declared a state of emergency
22 on March 12, the Church took proactive steps for its upcoming March 15 services.

23 25. The Church disinfected frequently touched surfaces such as door
24 handles, chairs, and tables before and after services; made hand sanitizer available
25 in multiple locations throughout the building's common areas; advised church
26 attendees to refrain from personal contact such as handshakes and hugs; instructed
27
28

1 those who felt sick or lived with someone who felt sick to stay home; and encouraged
2 online giving through the Church's website, among other things.

3 26. And the next day, on March 16, 2020, the Church temporarily
4 suspended in-person worship services and began streaming its services online.

5 27. More than two months later, the Governor's intervening Church
6 Gathering Ban has prevented the Church from resuming in-person worship
7 services.

8 28. Although the Church's initial decision to temporarily suspend in-
9 person services was voluntary, and made in an abundance of caution given the
10 health and safety concerns at the time, the Church believes it is called to resume in-
11 person worship services, consistent with its religious beliefs about corporate prayer,
12 worship, and fellowship.

13 29. The Church sincerely believes that online services and drive-in
14 services do not meet the Bible's requirement that the Church meet together in
15 person for corporate worship.

16 30. In addition, some of the Church's parishioners do not have internet
17 access or the ability to participate in online services.

18 31. The Church thus plans to resume in-person worship services on May
19 31, 2020 (Pentecost Sunday), but the Church Gathering Ban makes such services
20 illegal and would subject the Church to possible criminal and civil penalties.

21 32. Before Covid-19, the Church's two Sunday services could hold up to
22 200 people each.

23 33. The Church seeks to hold in-person services at 50% of its sanctuary's
24 capacity while also providing for proper social distancing of at least six feet
25 separation between families and individuals, which would amount to approximately
26 90 people in a service.

1 34. In preparation for resuming in-person worship services, the Church
2 has adopted—and will follow—strict social distancing and health and safety
3 protocols.

4 35. These protocols include the following precautions:

- 5 • Holding Sunday and Wednesday services;
- 6 • Strictly limiting Sunday services to 45 minutes (as opposed to the
7 usual 90 minutes);
- 8 • Holding up to three services each Sunday to guarantee adequate space
9 for social distancing at each service;
- 10 • Providing ½ hour between services to allow for thorough cleaning and
11 sanitizing of sanctuary, hallways, bathrooms, and common surfaces;
- 12 • Posting signs on walls and floors to direct traffic;
- 13 • Posting signs on restroom doors limiting use to one person at a time;
- 14 • Posting signs in the restrooms encouraging proper washing of hands;
- 15 • Making hand sanitizer stations easily accessible to attendees;
- 16 • Encouraging attendees to arrive no earlier than 25 minutes before
17 service;
- 18 • Using parking attendants to direct cars to designated parking areas;
- 19 • Directing all attendees to a designated entrance;
- 20 • Directing attendees to sanctuary seating designed to provide 6-feet of
21 separation between families and individuals;
- 22 • Ensuring that all traffic for each service will be in one direction by
23 using “first in, last out” model;
- 24 • Advising attendees of proper social distancing protocols;
- 25 • Encouraging attendees to bring and wear face coverings;
- 26 • Requiring all servants greeting or directing attendees to wear face
27 coverings;
- 28

- 1 • Prohibiting any handouts or items to be passed to attendees during
- 2 services;
- 3 • Prohibiting snacks or coffee from being served;
- 4 • Using prepacked Communion elements whenever served;
- 5 • Directing attendees out of the building to the parking area at the end
- 6 of each service;
- 7 • Instructing attendees to refrain from congregating in the building.

8 **The Governor's Orders**

9 36. On March 12, 2020, Governor Sisolak declared a state of emergency in
 10 response to the Covid-19 outbreak. *See* Declaration of Emergency, attached as
 11 **Exhibit 2**.

12 37. Noting that the Nevada Constitution gives him “[t]he supreme
 13 executive power of this State,” Governor Sisolak “direct[ed] all state agencies to
 14 supplement the efforts of all impacted and threatened counties” and announced that
 15 he would “perform and exercise such other functions, powers, and duties as are
 16 necessary to promote and secure the safety and protection of the civilian
 17 population.” *Id.*

18 38. Five days later, on March 17, 2020, Governor Sisolak held a press
 19 conference and explained steps the State would be taking to mitigate the risks
 20 associated with Covid-19. *See* Press Release (Mar. 17, 2020), attached as **Exhibit 3**.

21 39. While Governor Sisolak encouraged “faith leaders” during that press
 22 conference “to find ways to deliver to your congregation without bringing them
 23 together in person,” he assured them that he “cannot and will not say that places of
 24 worship should be closed.” *Id.* at 4.

“Essential” and “Non-Essential” Businesses

40. Three days later, Governor Sisolak issued an order mandating the closure of all “Non-Essential Businesses.” *See* Declaration of Emergency Directive 003, attached as **Exhibit 4**.

41. The Governor’s order defined “Non-Essential Businesses” to include, among other things, businesses that “promote recreational social gathering activities” and businesses that “promote extended periods of public interaction where the risk of [Covid-19] transmission is high,” including “beauty shops, barber shops, [and] nail salons.” *Id.*, §§ 1, 2.

42. Likewise, the Governor’s order limited restaurants and food establishments to “take-out, drive-through, curbside pickup, [and] delivery” service and prohibited them from providing dine-in service to any customers. *Id.*, § 3.

43. The Governor’s order did not close “Essential Licensed Business[es]” but rather encouraged them “to continue operation.” *Id.*, § 4.

44. In addition, the Governor’s order stated that “[t]he construction, mining, manufacturing, and infrastructure sector labor force may continue operations.” *Id.*, § 6.

45. In connection with the Governor’s order, the Nevada Department of Public Safety, Division of Emergency Management, adopted emergency regulations further defining “essential” and “non-essential” businesses. *See* Emergency Regulations, March 20, 2020, attached as **Exhibit 5**.

46. Businesses not delineated in the Governor’s order or in the emergency regulations could continue operations if they could “implement social distancing safeguards for the protection of their employees” and, “[t]o the extent practicable, provide services without causing members of the Nevada general public to congregate in a manner contrary to social distancing goals of a minimum of six feet of separation for more than incidental contact.” Ex. 4, § 8.

47. Because neither the Governor’s order nor the emergency regulations referenced churches or places of worship, they should have been allowed to continue operations and in-person services.

The Church Gathering Ban

48. A few days later, Governor Sisolak issued another order—this time forbidding the “general public” from “gather[ing] in groups of ten or more in any indoor or outdoor area.” Declaration of Emergency Directive 007, § 1, attached as **Exhibit 6**.

49. The Governor issued his stay-at-home order shortly thereafter. *See* Declaration of Emergency Directive 010, attached as **Exhibit 7**.

50. And even though Governor Sisolak assured faith leaders that he would not and could not close houses of worship, he imposed a Church Gathering Ban on April 8, 2020, expressly prohibiting “[p]laces of worship” from “hold[ing] in-person worship services where ten or more persons may gather.” Declaration of Emergency Directive 013, § 4, attached as **Exhibit 8**.

51. Related guidance from the Governor’s office claimed that “this is not yet the time to get people together to celebrate their faith” and that “nobody should be physically attending in-person worship services.” Guidance: Directive 013 (Apr. 8, 2020), attached as **Exhibit 9**.

52. The Church Gathering Ban is indefinite, with the applicable order stating that it will remain in place “for the remainder of the Declaration of Emergency.” Ex. 8, § 4.

Secular Exceptions to the Gathering Bans

53. There are numerous secular exceptions to the Governor’s gathering restrictions.

1 54. For one thing, the Governor’s ban on gatherings of ten or more people
 2 does not apply to “the gathering of persons . . . working at or patronizing Essential
 3 Licensed Businesses or providing essential services to the public.” Ex. 6, § 1.

4 55. Thus, ten or more people could—and still can—gather for an extended
 5 period of time to, among other things, work at or patronize:

- 6 • “Essential infrastructure operations,” including “airport[s]”;
- 7 • “Businesses that ship or deliver goods directly to residences”;
- 8 • “Banks and Financial Institutions”;
- 9 • “Pawnbrokers”;
- 10 • Businesses or entities that provide “social services for economically
 11 disadvantaged individuals, vulnerable populations, or victims of
 12 crime”;
- 13 • “Laundromats and dry cleaners”;
- 14 • “Warehouses and storage facilities”;
- 15 • “Professional or technical services including legal, accounting, tax,
 16 payroll, real estate, and property management services”;
- 17 • “Child care facilities”; and
- 18 • “Newspapers, television, radio, and other media services.”

19 Ex. 5 (NAC 414.XXX(1)).

20 56. What is more, Governor Sisolak’s recent order implementing “Phase
 21 One” of the State’s reopening plan has exempted some “non-essential” businesses
 22 and activities from the ban, allowing even more gatherings of ten or more people for
 23 secular reasons. For example, the Governor’s “Phase One” order allows:

- 24 • All restaurants and food establishments to resume onsite, in-person
 25 dining—up to “50% of the maximum seating capacity under normal
 26 circumstances”;
- 27 • All retail businesses to reopen at 50% capacity;

- 1 • Auto showrooms, furniture showrooms, home furnishing showrooms,
- 2 and appliance showrooms to reopen at 50% capacity;
- 3 • Cannabis dispensaries to resume in-person sales; and
- 4 • Nail care salons, hair salons, and barber shops to reopen.

5 Declaration of Emergency Directive 018, §§ 13, 15, 16, 17, 22, attached as **Exhibit**
6 **10**; *see also* Ex. 8, § 3.

7 57. By allowing restaurants, food establishments, nail care salons, hair
8 salons, and barber shops to reopen, the Governor has allowed businesses and
9 entities to reopen that the State previously determined “promote extended periods
10 of public interaction where the risk of [Covid-19] transmission is high.” Ex. 4, § 2.

11 58. Yet the Governor has refused to provide a similar accommodation to
12 churches and other places of worship.

13 59. Nor has the Governor given any indication of when churches could
14 expect to resume in-person services of ten or more people.

15 60. In fact, on May 14, 2020, nearly 200 hundred churches (including
16 Plaintiff) sent a letter to Governor Sisolak respectfully asking him to lift the ban on
17 in-person worship services. At a press conference the next day, and in response to a
18 question about whether he received and read the letter from the churches, the
19 Governor first answered no but then said he read “parts of the letter.” He then
20 doubled down on his prior orders, stating that there would be no effort to amend
21 phase one to include churches.

22 61. If the Church does not comply with the Governor’s orders or emergency
23 regulations, it would be “subject to criminal prosecution and civil penalties.” Ex. 4, §
24 9; Ex. 6, § 5; *see also* Ex. 8, § 11.

25 62. The Nevada Attorney General and “[a]ll law enforcement agencies in
26 the State of Nevada,” including the Lyon County Sheriff’s Office, are authorized to
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1 enforce the Governor's orders and the emergency regulations. Ex. 4, § 9; Ex. 6, § 5;
2 *see also* Ex. 8, § 11.

3 63. Thus, Calvary Chapel Dayton Valley may not hold its planned in-
4 person services without subjecting itself to criminal and civil penalties, even though
5 its services would amount to less than 50% of the building's capacity and would
6 adhere to strict social distancing and sanitation measures.

7 64. But Governor Sisolak does not have the authority under Nevada law to
8 impose the Church Gathering Ban.

9 65. Rather, the power to investigate and quarantine people with
10 communicable or infectious diseases is given to health authorities, not the
11 Governor.

12 66. Without declaratory and injunctive relief, the Church's religious
13 exercise will continue to be chilled and the Church will continue to suffer violations
14 of its constitutional rights and irreparable harm.

15 **COUNT I**

16 **Violation of the First Amendment to the U.S. Constitution**

17 **(Free Exercise)**

18 67. Plaintiff incorporates by reference paragraphs 1 through 66.

19 68. Plaintiff's sincerely held religious beliefs teach that the Bible is the
20 inspired word of God and the sole authority for faith and practice.

21 69. Plaintiff sincerely believes that the Bible teaches the necessity of
22 gathering together for corporate prayer, worship, and fellowship and that such
23 assembly is necessary and good for the Church and its members' spiritual growth.

24 70. The Governor's Church Gathering Ban substantially burdens
25 Plaintiff's religion by prohibiting it from holding in-person church services with ten
26 or more persons.

1 when viewed in light of the numerous secular activities exempted under the
2 Governor's orders.

3 81. Defendants have alternative, less restrictive means to achieve any
4 interest that it might have.

5 82. The Church Gathering Ban violates the right to assemble under the
6 First Amendment to the United States Constitution, both facially and as applied.

7 83. Without declaratory and injunctive relief, Plaintiff will be irreparably
8 harmed.

9 **COUNT III**

10 **Violation of the First Amendment to the U.S. Constitution**

11 **(Free Speech)**

12 84. Plaintiffs incorporate by reference paragraphs 1 through 66.

13 85. The Governor's Church Gathering Ban violates Plaintiff's freedom of
14 speech by prohibiting it from engaging in religious speech through its church
15 services, which occur exclusively on private property.

16 86. The Governor's Church Gathering Ban specifically targets meetings of
17 ten or more people for the purpose of religious expression, while permitting
18 meetings of the same or greater size for secular purposes.

19 87. The Governor's Church Gathering Ban is thus is content- and
20 viewpoint-based in violation of the First Amendment.

21 88. The Governor's Church Gathering Ban gives government officials
22 unbridled discretion with respect to enforcement of the order and the imposition of
23 any penalty, making the order susceptible to both content- and viewpoint-based
24 discrimination.

25 89. Prohibiting or punishing Plaintiff's religious speech does not serve any
26 legitimate, rational, substantial, or compelling governmental interest.

1 90. The State also has alternative, less restrictive means to achieve any
2 interest that it might have.

3 91. The Church Gathering Ban violates the Free Speech Clause of the
4 First Amendment to the United States Constitution, both facially and as applied.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff respectfully requests that the Court:

7 a. Enter a temporary restraining order, preliminary injunction, and
8 permanent injunction prohibiting Defendants from enforcing those portions of the
9 Governor's orders that limit in-person church services to fewer than 10 persons,
10 thereby allowing Plaintiff and its congregants to resume corporate prayer and
11 worship while following adequate social distancing and public health guidelines.

12 b. Enter a judgment declaring that those portions of the Governor's
13 orders that limit in-person church services to fewer than 10 persons violate the U.S.
14 Constitution's Free Exercise and Right to Assemble Clauses, both facially and as-
15 applied;

16 c. Award Plaintiff court costs and reasonable attorney's fees; and

17 d. Award such other and further relief as to which Plaintiff may be
18 entitled.

1 Respectfully submitted this 22nd day of May 2020.

2
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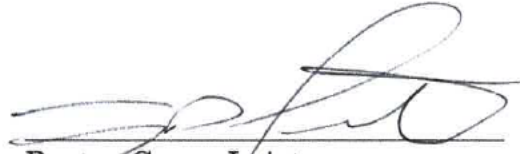
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**Pro hac vice application forthcoming*

VERIFICATION

I declare under penalty of perjury that the foregoing Verified Complaint has been examined by me and that the factual allegations therein are true to the best of my knowledge, information, and belief.

Dated: May 21, 2020



Pastor Garry Leist
Calvary Chapel Dayton Valley