No. 20-569

IN THE SUPREME COURT
OF THE UNITED STATES

ELIM ROMANIAN PENTECOSTAL CHURCH, and LOGOS BAPTIST MINISTRIEES

Petitioners

v.

JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois

Respondent

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

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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LEGAL ARGUMENT

I. THE DECISION BELOW IS IN DIRECT CONFLICT WITH THIS COURT'S PRECEDENTS IN *CATHOLIC DIOCESE*, *SOUTH BAY*, AND *HARVEST ROCK*.

A. The Decision Below Directly Conflicts With This Court's Decisions on Discriminatory Treatment of Religious Worship.

The decision below is in direct conflict with this Court's decisions in *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020); *South Bay United Pentecostal Church v. Newsom*, 141 S. Ct. 716 (2021), and *Harvest Rock Church v. Newsom*, No. 20A137, 2021 WL 406257 (U.S. Feb. 5, 2021).

In *Catholic Diocese*, this Court enjoined an identical 10-person restriction on religious gatherings when nonreligious gatherings were not so limited. 141 S. Ct. at 64. The Court explicitly mentioned numerous examples of disparate treatment that are equally present here:

> In a red zone, while a synagogue or church may not admit more than 10 persons, businesses categorized as "essential" may admit as many people as they wish. And the list of "essential" businesses includes things such as acupuncture facilities, camp grounds, garages, as well as many whose

> services are not limited to those that can be regarded as essential, such as all **plants manufacturing chemicals and microelectronics and all transportation facilities**.

141 S. Ct. at 66 (emphasis added). "The disparate treatment is even more striking in an orange zone where attendance at houses of worship is limited to 25 persons, but non-essential businesses may decide for themselves how many persons to admit." *Id.* "[A] large store in Brooklyn . . . could literally have hundreds of people shopping there on any given day. Yet a nearby church or synagogue would be prohibited from allowing more than 10 or 25 people inside for a worship service." *Id.* (cleaned up). *See also id.* at 69 (Gorsuch, J., concurring) (noting that exempted business included "**hardware stores, acupuncturists, and liquor stores. Bicycle repair shops, certain signage companies, accountants, lawyers, and insurance agents**" (emphasis added)); *id.* at 73 (Kavanaugh, J., concurring) (noting that "**[i]n a red zone, for example, a church or synagogue must adhere to a 10-person attendance cap, while a grocery store, pet store, or big-box store down the street does not face the same restriction. In an orange zone, the discrimination against religion is even starker: Essential businesses and many non-essential businesses are subject to no attendance caps at all**" (emphasis added)).

In *South Bay*, this Court faced a state's COVID-19 regime discriminating against religious

worship while exempting myriad other gatherings. 141 S. Ct. at 716. There, California imposed a total prohibition on religious worship. *Id.* Based on *Catholic Diocese*, this Court issued an injunction prohibiting the Governor from enforcing his unconstitutional prohibitions on religious gatherings. *Id.* Chief Justice Roberts noted that while courts have generally been inclined to grant deference during a pandemic, "the State's present determination—that the maximum number of adherents who can safely worship in the most cavernous cathedral is zero—appears to reflect not expertise or discretion, but instead **insufficient appreciation or consideration of the interests at stake**." *Id.* at 717 (Roberts, C.J., concurring) (emphasis added). As Justice Gorsuch noted, "[w]hen a State so obviously targets religion for differential treatment, our job becomes that much clearer." *Id.* (Gorsuch, J., statement). There, as here, the Governor permitted nonreligious gatherings to continue to operate with more favorable restrictions while imposing more severe burdens on religious worship. *Id.* at 717-18 ("At "Tier 1," applicable today in most of the State, California forbids any kind of indoor worship. Meanwhile, the State allows most retail operations to proceed indoors with 25% occupancy, and other businesses to operate at 50% occupancy.").

In *Harvest Rock Church v. Newsom*, No. 20A137, 2021 WL 406257 (U.S. Feb. 5, 2021), this Court yet again issued an injunction pending appeal against discriminatory COVID-19 restrictions in California. Based on its decisions in *Catholic Diocese*

and *South Bay*, this Court again held that discriminatory restrictions against religious worship that are not imposed on secular gatherings cannot withstand First Amendment scrutiny. *Id.* at *1.

In contrast, the decision below held that comparisons to "grocery shopping (more than ten people at a time may be in a store) or warehouses (where a substantial staff may congregate to prepare and deliver goods that retail shops sell)," big box stores, liquor stores, banks, laundromats, meatpacking plants, offices, and a host of other exempt activities were inappropriate and did not show discriminatory treatment of religious worship. (App. 009a-010a.) The myriad exemptions found constitutionally infirm in *Catholic Diocese*, *South Bay*, and *Harvest Rock* are all present in the Governor's Orders here, but the Seventh Circuit upheld such disparate treatment. That decision cannot be reconciled with this Court's decisions. **In fact, Justice Gorsuch has already pointed out that the Seventh Circuit's decision below is in direct conflict with this Court's precedents**. 141 S. Ct. at 71 ("many lower courts quite understandably read its invocation as inviting them to slacken their enforcement of constitutional liberties while COVID lingers." (citing *Elim Romanian Pentecostal Church v. Pritzker*, 962 F.3d 341 (7th Cir. 2020)).

B. The Decision Below Is in Direct Conflict With This Court's Decisions Concerning the Value Judgments Accorded to Exempt Nonreligious Gatherings and Restricted Religious Worship.

In *Catholic Diocese*, this Court held that it was insufficient for the government to tell religious congregants to engage in religious worship online or via television. 141 S. Ct. at 68.

> If only 10 people are admitted to each service, the great majority of those who wish to attend Mass on Sunday or services in a synagogue on Shabbat will be barred. And while those who are shut out may in some instances be able to watch services on television, such **remote viewing is not the same as personal attendance**.

Id. (emphasis added). *See also Roberts v. Neace*, 958 F.3d 409, 415 (6th Cir. 2020) ("Sure, the Church might use Zoom services or the like, as so many places of worship have decided to do over the last two months. But who is to say that every member of the congregation has access to the necessary technology to make that work? Or to say that every member of the congregation must see it as an adequate substitute . . . .").

Here, the Seventh Circuit specifically held that online worship was sufficient to remove any

constitutional infirmity. (App. 011a.) The court stated that "large in-person worship services" can be replaced by "smaller gatherings, radio and TV worship services, drive-in worship services, and the Internet." (App. 011a.) Shockingly, the court held that "[f]eeding the body requires teams of people to work together in physical spaces, but churches can feed the spirit in other ways." (App. 011a.) That decision conflicts with *Catholic Diocese*, and certiorari is warranted.

II. THE DECISION BELOW IS IN DIRECT CONFLICT WITH THE SECOND, SIXTH, AND NINTH CIRCUITS.

The decision below is also in conflict with the Second, Sixth, and Ninth Circuits concerning similar challenges to COVID-19 restrictions on religious gatherings. While the panel below upheld the Governor's discriminatory numerical cap of 10-people as constitutional, abundant decisions from other circuits have enjoined identical or even more favorable restrictions on religious gatherings that were not likewise imposed on nonreligious gatherings. *See, e.g.*, *Agudath Israel of Am. v. Cuomo*, 983 F.3d 620 (2d Cir. 2020) (enjoining New York's discriminatory restrictions on religious gatherings to 10 or 25 people); *Calvary Chapel Dayton Valley v. Sisolak*, 982 F.3d 1228 (9th Cir. 2020) (enjoining Nevada's 50-person numerical caps imposed only on religious gatherings); *Calvary Chapel Lone Mountain v. Sisolak*, 831 F. App'x 317 (9th Cir. 2020) (same); *Harvest Rock Church v. Newsom*, 985 F.3d 771 (9th Cir. 2021) (enjoining

California's 100 and 200-person numerical caps on religious gatherings not imposed on nonreligious gatherings); *South Bay United Pentecostal Church v. Newsom*, 985 F.3d 1128 (9th Cir. 2021) (same); *Maryville Baptist Church, Inc. v. Beshear*, 957 F.3d 610 (6th Cir. 2020) (enjoining Kentucky's prohibition on drive-in worship services); *Roberts v. Neace*, 958 F.3d 409 (6th Cir. 2020) (enjoining Kentucky's prohibition on in-person worship services).

While the Second, Sixth, and Ninth Circuits have all enjoined discriminatory restrictions on religious worship that are not imposed on nonreligious gatherings, the Seventh Circuit permitted the Governor to impose virtually identical restrictions. Certiorari is warranted to align the Circuits with *Catholic Diocese*, *Harvest Rock*, and *South Bay*.

III. THIS COURT'S DECISION IN *CATHOLIC DIOCESE* DEMONSTRATES THAT THE GOVERNOR'S MOOTNESS CONTENTIONS ARE WITHOUT MERIT.

Respondent takes great pains to claim the instant matter is moot because his discriminatory and unconstitutional orders "expired." (Brief in Opposition, "Opp'n," at 1-2.) *Catholic Diocese* compels the opposite conclusion, regardless of the Governor's temporary retreat from the worst of his restrictions. In *Catholic Diocese*, after the congregations applied for relief, but before their injunction was granted, the Governor removed the

restrictions. 141 S. Ct. at 68. The dissenting Justices argued the Court should stay its hand because of the changed circumstances, and that the congregations could "renew their requests if this recent reclassification is reversed." *Id.*

The Majority disagreed: **"There is no justification for that proposed course of action. It is clear that this matter is not moot."** *Id.* (emphasis added).

> [I]njunctive relief is still called for because the applicants remain under a constant threat that the area in question will be reclassified . . . . The Governor regularly changes the classification of particular areas without prior notice. **If that occurs again, the reclassification will almost certainly bar individuals in the affected area from attending services before judicial relief can be obtained**.

Id. (emphasis added) (cleaned up). This Court concluded, "there is no reason why [the congregations] should bear the risk of suffering further irreparable harm in the event of another reclassification." *Id.* at 68–69.

> Even if the churches and synagogues before us have been subject to unconstitutional restrictions for months, it is no matter because, just

the other day, the Governor changed his color code for Brooklyn and Queens where the plaintiffs are located. Now those regions are "yellow zones" and the challenged restrictions on worship associated with "orange" and "red zones" do not apply. **So, the reasoning goes, we should send the plaintiffs home with an invitation to return later if need be.**

To my mind, this reply only advances the case for intervention. It has taken weeks for the plaintiffs to work their way through the judicial system and bring their case to us. During all this time, they were subject to unconstitutional restrictions. Now, just as this Court was preparing to act on their applications, the Governor loosened his restrictions, all while continuing to assert the power to tighten them again anytime as conditions warrant. **So if we dismissed this case, nothing would prevent the Governor from reinstating the challenged restrictions tomorrow. And by the time a new challenge might work its way to us, he could just change them again. The Governor has fought this case at every step of the way. To turn away religious leaders bringing meritorious**

> **claims just because the Governor decided to hit the "off " switch in the shadow of our review would be, in my view, just another sacrifice of fundamental rights in the name of judicial modesty.**

Id. at 71–72 (Gorsuch, J., concurring) (emphasis added).

This same is true here. And, the panel below recognized that fact. (App. 007a ("it is not absolutely clear that the terms of Executive Order 2020-32 will never be restored. **It follows that the dispute is not moot and that we must address the merits**.") (emphasis added).) As in *Catholic Diocese*, the Governor could impose his restrictions again at any time. In fact, in the record below, the Governor explicitly stated that "a new strain of this virus could come by in Illinois and **more restrictions would be necessary**." (App. 141a (emphasis added).) If Petitioners' case is found moot, Petitioners could easily be in the same position again—nothing would stop the Governor from hitting the "'off switch'" before Petitioners could obtain relief. *Id.*

IV. THE GOVERNOR'S VOLUNTARY CESSATION OF ILLEGAL CONDUCT DOES NOT MOOT THE APPEAL.

A. The Record Evidence Does Not Demonstrate Absolutely Clarity That the Governor Will Not Return to His Prior Unconstitutional Regime.

The Governor's temporary shift from the discriminatory restrictions on religious worship first enshrined in his Executive Order 32, which he vigorously defended at the Seventh Circuit below and continues here, is insufficient to remove his conduct from review. *See City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982).

> **[A] defendant cannot automatically moot a case simply by ending its unlawful conduct once sued**. Otherwise, a defendant could engage in unlawful conduct, stop when sued to have the case declared moot, then pick up where he left off, repeating this cycle until he achieves all his unlawful ends. Given this concern, our cases have explained that **a defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful**

> **behavior could not reasonably be expected to recur**.

Already, LLC v. Nike, Inc., 568 U.S. 85, 91 (2013) (emphasis added) (cleaned up).

Applying this "formidable burden," this Court held in *Trinity Lutheran Church of Columbia, Inc. v. Comer* that a governor's "voluntary cessation of a challenged practice does not moot a case unless subsequent events make it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." 137 S. Ct. 2012, 2019 n.1 (2017) (cleaned up). Here, the Governor "has not carried the 'heavy burden' of making 'absolutely clear' that [he] could not revert to [his] policy," *id.*, of imposing discriminatory restrictions on religious worship services, because his sudden change in policy is neither permanent nor irrevocable. *See City of L.A. v. Lyons*, 461 U.S. 95, 101 (1983).

The Governor has "neither asserted nor demonstrated that [he] will **never** resume the complained of conduct." *Norman-Bloodsaw v. Lawrence Berkely Lab.*, 135 F.3d 1260, 1274 (9th Cir 1998) (emphasis added). Rather, the Governor explicitly refused to state he would not return to his previous orders. (App. 140a ("So is the Governor willing to make an iron-clad commitment not to rescind the current order? . . . **No, your Honor, we are not**." (emphasis added).) And, to add insult to injury, the Governor continued to lay the ground work for re-imposing his restrictions below. (App. 141a ("a new strain of this virus could come by in

Illinois and **more restrictions would be necessary**" (emphasis added).) (App. 151a ("THE COURT: Would you be willing . . . to say that you will not enforce or go back to the original order without coming to this Court to seek permission? [Counsel]: Your Honor, **we are not willing to do that**.")) (emphasis added).

The Governor has not disavowed reinstatement of unconstitutional restrictions, and he has explicitly preserved the right to do so again. His obvious hedging precludes any mootness argument. *Cf. United States v. Sanchez-Gomez*, 138 S. Ct. 1532, 1537 n.* (2018) (holding, where intent to reinstate, "the rescission of the policy does not render this case moot"); *Pierce v. Ducey*, No. CV-16-01538-PHX-NVW, 2019 WL 4750138, at *1 (D. Ariz. Sept. 30, 2019) ("A voluntary cessation joined with a threat to do it again is the paradigm of unsuccessful blunting of power to adjudicate . . . ."); *id* at *5–6 ("The Court is not fooled.").

B. The Governor's Executive Orders Did Not "Expire," but Were Revoked on the Eve of His This Court Deadline for His Response to the Emergency Application.

The Governor contends that his discriminatory Orders expired as to render the Petition moot. (Opp'n at 11-19.) This is incorrect. In fact, the timing of the Governor's removal of his restrictions evinces litigation tactics, not a genuine change of course. When Petitioners sought

emergency relief from this Court as to the 10-person restrictions on religious worship, the Governor only revoked his restrictions a mere three hours before he was set to file a response with this Court. (App. 128a.) This litigation-induced timing betrays an intent to go back. *Cf. Knox v. Serv. Emps. Int'l Union, Local 1000*, 567 U.S. 298, 307 (2012) ("Such [post-litigation] maneuvers designed to insulate a decision from review by this Court must be viewed with a critical eye."); *McCreary County, Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 871 (2005) (rejecting counties' mere "litigating position" as evidence of actual intent). Then, during oral argument below, the Governor's counsel twice refused to commit not to reimpose the restrictions. Indeed, "[t]he defendant is free to return to his old ways. This, together with a public interest in having the legality of the practices settled, militates against a mootness conclusion." *United States v. W.T. Grant Co.*, 345 U.S. 629, 632 (1953) (footnote omitted).

C. The Governor Continues To Defend His Previous Regime.

A case is not moot where, as here, the Governor "did not voluntarily cease the challenged activity because he felt [it] was improper," and "has at all times continued to argue vigorously that his actions were lawful." *Olagues v. Russoniello*, 770 F.2d 791, 795 (9th Cir. 1985); *Pierce*, 2019 WL 4750138, at *5 ("[W]hen the government ceases a challenged policy without renouncing it, the voluntary cessation is less likely to moot the case.").

The Governor continues to assert that his previous orders were constitutional. (Opp'n at 22 ("**To be sure, the expired executive order at issue here is distinguishable in several ways from the order at issue in *Catholic Diocese* [and] might be sustained against petitioner's challenges**") (emphasis added)). The Governor vigorously defended his orders at the Seventh Circuit and continues to do so here. "There is nothing in the parties' submissions or the record to demonstrate the Governor changed his mind about the merits of Plaintiff[s'] claim." *Pierce*, 2019 WL 4750138, at *6. "The Governor did not experience a change of heart that may counsel against a mootness finding." *Id.* "Given the importance of the issues at bar . . . the public interest in having the legality of the Governor's behavior settled weighs against a mootness ruling." *Id.* at *7.

V. THIS CASE IS AN APPROPRIATE VEHICLE FOR CERTIORARI TO FINALLY RESOLVE, NATIONWIDE, THE DISCRIMINATORY TREATMENT OF RELIGIOUS WORSHIP DURING COVID-19 ON A DEVELOPED RECORD INSTEAD OF AN EMERGENCY APPLICATION.

As Justice Gorsuch stated in *South Bay*, "[t]oday's orders should have been needless; **the lower courts in these cases should have followed the extensive guidance that this Court already gave**." 141 S. Ct. at 719 (Gorsuch, J., statement) (emphasis added). Unfortunately, the

lower courts are still not following this Court's decision in *Catholic Diocese*. Indeed, post-*Catholic Diocese*, the Ninth Circuit twice refused to follow *Catholic Diocese* in *South Bay United Pentecostal Church v. Newsom*, 985 F.3d 1128 (9th Cir. 2021) and *Harvest Rock Church v. Newsom*, 985 F.3d 771 (9th Cir. 2021), which necessitated this Court's further exercise of emergency injunctive relief in *South Bay*, 141 S. Ct. 716 and *Harvest Rock*, 2021 WL 406257. Notably, this Court's emergency injunctive relief in *Harvest Rock* came after it had already vacated the Ninth Circuit's prior denial of injunctive relief. *See Harvest Rock Church v. Newsom, Gov. of CA*, No. 20A94, 592 U.S. ___, 2020 WL 7061630 (U.S. Dec. 3, 2020).

The Ninth Circuit is not alone in charting its own course. The First Circuit, too, cast doubt on its belief that *Catholic Diocese* compelled invalidating discriminatory restrictions on religious worship. *Calvary Chapel of Bangor v. Mills*, 984 F.3d 21 (1st Cir. 2020). Despite *Catholic Diocese*, the First Circuit noted that imposing discriminatory restrictions on religious worship that are not imposed on nonreligious gatherings "will not cause serious harm," and that "public officials be accorded considerable latitude" when imposing discriminatory restrictions on religious worship. *Id.* at 29.

In California, too, various state courts continue to ignore *Catholic Diocese, South Bay, and Harvest Rock,* and impose fines against Churches for engaging in constitutionally protected religious

worship. *See* KTVU, *San Jose Church Fined $2M; other California churches open doors following new ruling* (Feb. 8, 2021), https://www.ktvu.com/news/san-jose-church-fined-2m-for-virus-violations-other-churches-open-doors-following-new-ruling (noting that, even after this Court's holding in *Catholic Diocese*, *South Bay*, and *Harvest Rock*, some counties in California are continuing to impose fines – one of which was $2 million – for engaging in religious worship); NYTimes, *Under Pressure, California Church Postpones Conference for Thousands* (Feb. 12, 2021), https://www.nytimes.com/2021/02/12/us/John-MacArthur-covid-grace-community-church.html (noting that Los Angeles County continues to threaten churches in California for gathering for religious worship even after *Catholic Diocese*);

Some courts have indicated that *Catholic Diocese*, *South Bay*, and *Harvest Rock* were all issued in an emergency posture and are thus not afforded as much weight as merits decisions and others have simply ignored this Court. Regardless of the erroneous rationale giving rise to this disturbing trend of ignoring this Court, one thing is clear: granting certiorari in a case with a fully developed record not in an emergency writ of injunction will give this Court the opportune vehicle to address these discriminatory restrictions on religious worship that "strike at the very heart of the First Amendment's guarantee of religious liberty." *Catholic Diocese*, 141 S. Ct. at 68. Certiorari should be granted to provide final clarity to the issues of

discriminating against religious worship during COVID-19.

VI. BECAUSE THE DECISION BELOW CANNOT BE RECONCILED WITH THIS COURT'S PRECEDENTS, SUMMARY REVERSAL IS ALSO APPROPRIATE.

While the instant Petition is an appropriate and warranted vehicle to finally resolve the discriminatory restrictions on religious worship in the COVID-19 era, this Court could also summarily reverse the lower court's decision based on its clear holdings in *Catholic Diocese*, *Harvest Rock*, and *South Bay*. Summary reversal is appropriate when the lower court "egregiously misapplied settled law." *Weary v. Cain*, 136 S. Ct. 1002, 1007 (2016) (citing *Mullenix v. Luna*, 577 U.S. 7, 16 (2015); *Stanton v. Sims*, 571 U.S. 3 (2013); *Parker v. Matthews*, 567 U.S. 37 (2012); *Coleman v. Johnson*, 566 U.S. 650 (2012); *Wetzel v. Lambert*, 565 U.S. 520 (2012); *Ryburn v. Huff*, 565 U.S. 469 (2012); *Sears v. Upton*, 561 U.S. 945 (2010)). When a lower court "disregard[s] our other constitutional decisions," summary reversal is appropriate. *See, e.g.*, *Friedman v. City of Highland Park*, 136 S. Ct. 447, 449-50 (2015) (Thomas, J., dissenting). Summary reversal is appropriate even when the case involves "intensely factual questions without full briefing and argument," *Weary*, 136 S. Ct. at 1007, where the decision is "understandable" but "runs directly counter to our precedents." *Martinez v. Illinois*, 572 U.S. 833, 843 (2014).

As this Court held in *Catholic Diocese*: "**even in a pandemic, the Constitution cannot be put away and forgotten**." 141 S. Ct. at 68 (emphasis added). Where – as here – government regulations "single out houses of worship for especially harsh treatment," Petitioners "have clearly established their entitlement to relief." *Id.* at 66. Indeed, "there is no world in which the Constitution tolerates color-coded executive edicts that reopen liquor stores and bike shops but shutter churches, synagogues, and mosques." *Id.* at 72 (Gorsuch, J., concurring).

After positing that "[i]t would be foolish to pretend that worship services are exactly like any of the possible comparisons" this Court found constitutionally relevant in *Catholic Diocese*, (App. 010a), the Seventh Circuit reached back to Chief Justice Roberts' concurrence in *South Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1613 (2020) to claim that *Jacobsen v. Massachusetts*, 197 U.S. 11 (1905) "sustains a public-health order against a constitutional challenge." (App. 010a.) But, *Catholic Diocese* put that argument to rest. "The restrictions at issue here, by effectively barring many from attending religious services, strike at the very heart of the First Amendment's guarantee of religious liberty." 141 S. Ct. at 68. And, "we have a duty to conduct a serious examination of the need for such a drastic measure." *Id.* The Seventh Circuit's reliance on a single concurrence cannot be reconciled with *Catholic Diocese*.

As Justice Gorsuch's stated:

> Rather than apply a nonbinding and expired concurrence from *South Bay*, courts must resume applying the Free Exercise Clause. Today, a majority of the Court makes this plain**.**

Id. at 70 (Gorsuch, J., concurring).

Yet, despite the "seismic shift" of *Catholic Diocese*, *Calvary Chapel Dayton Valley*, 982 F.3d at 1232, the Seventh Circuit reached back to a single concurrence that "runs directly counter to our precedents." *Martinez*, 572 U.S. at 843. As Justice Gorsuch noted in *Danville Christian Academy v. Beshear*, "**this Court made clear that it would no longer tolerate such departures from the Constitution**." 141 S. Ct. 527, 530 (2020) (Gorsuch, J., dissenting) (emphasis added). Because the Seventh Circuit's decision cannot be reconciled with *Catholic Diocese*, *South Bay*, and *Harvest Rock*, summary reversal is appropriate.

While summary reversal is technically available and even proper in the instant matter, certiorari and a full resolution of the matter is the more appropriate course. Since the imposition of discriminatory restrictions on religious worship services beginning in March 2020, this Court has been bombarded with emergency petitions and continual requests for injunctive relief. Such a flood of unnecessary applications will continue unless this Court issues a dispositive resolution putting the final nail in the coffin of these unconstitutional

orders. Certiorari is the appropriate vehicle to make that happen and should be granted.

CONCLUSION

For the foregoing reasons and for those articulated in the Petition for Certiorari, the Petition should be granted.

Dated this March 1, 2021.

Respectfully submitted,

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