UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**LACV 20-6414 JGB (KKx)**	Date	September 2, 2020
Title	***Harvest Rock Church, Inc., et al. v. Gavin Newsom***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter
Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: Order DENYING Plaintiffs' Motion for Preliminary Injunction (Dkt. No. 4)

Before the Court is a Motion for Preliminary Injunction filed by Plaintiffs Harvest International Ministry, Inc. and Harvest Rock Church, Inc. ("Motion," Dkt. No. 4.) The Court held a telephonic hearing on the Motion on August 12, 2020. After considering the papers filed in support of and in opposition to the Motion, the Court DENIES the Motion.

I. BACKGROUND

On July 17, 2020, Plaintiffs filed their complaint against Defendant California Governor Gavin Newsom. ("Complaint," Dkt. No. 1.) The Complaint alleges six causes of action: (1) Violation of Free Exercise Clause of First Amendment to U.S. Constitution; (2) Violation of First Amendment Freedom of Assembly Clause; (3) Violation of Free Speech Clause of First Amendment to U.S. Constitution; (4) Violation of Establishment Clause of First Amendment to U.S. Constitution; (5) Violation of Equal Protection Clause of Fourteenth Amendment to U.S. Constitution; and (6) Violation of the Guarantee Clause of the U.S. Constitution.

On July 18, 2020, Plaintiffs filed a Motion for Temporary Restraining Order and Preliminary Injunction. ("Motion," Dkt. No. 4.) Defendant opposed the Motion on August 3, 2020. ("Opposition," Dkt. No. 31.) In support of the Opposition, Defendant filed the Declaration of Seth Goldstein and the Declaration of James Watt, M.D. ("Goldstein

Declaration," Dkt. No. 31-1; "Watt Declaration," Dkt. No. 31-2.) Plaintiffs replied in support of the Motion on August 7, 2020.[1] ("Reply," Dkt. No. 37.)

II. LEGAL STANDARD

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). "A preliminary injunction is an extraordinary and drastic remedy; it is never awarded as of right." Munaf v. Geren, 553 U.S. 674, 690 (2008) (citations omitted). An injunction is binding only on parties to the action, their officers, agents, servants, employees and attorneys and those "in active concert or participation" with them. Fed. R. Civ. P. 65(d).

Under the Ninth Circuit's "sliding scale" approach to preliminary injunctions, the four "elements of the preliminary injunction test are balanced, so that a stronger showing of one element may offset a weaker showing of another." All for The Wild Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011). Thus, "a preliminary injunction could issue where the likelihood of success is such that serious questions going to the merits were raised and the balance of hardships tips sharply in [plaintiff's] favor.'" Id. at 1131–32 (internal quotation omitted). Put differently, "'serious questions going to the merits' and a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements [likelihood of irreparable injury and public interest] of the Winter test are also met." Id. at 1132. Regardless of the strength of its showings on the other factors, a plaintiff may not obtain a preliminary injunction unless he or she establishes that irreparable harm is likely to result in the absence of the requested injunction. Id. at 1135.

III. DISCUSSION

COVID-19 has killed over 10,000 California residents and infected more than half a million.[2] The disease spreads via respiratory droplets and—without a known vaccine or cure—the best way to slow COVID-19's spread is through social distancing measures. (Watt Declaration ¶ 16.)

To slow the spread of COVID-19, the Governor has issued a series of orders ("Orders") restricting certain activities and mandating distancing and hygiene protocols for others. As the pandemic has evolved, so too has the scope of the Orders. (Complaint, Exhibits A–M.) The Orders currently ban indoor religious services in counties that have been on a watchlist for three consecutive days or more. (Complaint, Exhibit M.) Outdoor services can take place without

[1] Plaintiffs moved for an extension to the 12-page limit for reply briefs. ("Reply Request," Dkt. No. 38.) The Reply Request is unopposed. The Court GRANTS the Reply Request and accepts the Reply as filed.

[2] https://covid19.ca.gov/ (last accessed August 12, 2020).

restriction on the number of attendees. (Id.) Plaintiffs seek to enjoin enforcement of the Orders' ban on indoor religious services, arguing that the ban violates the Free Exercise, Establishment and Free Speech Clauses of the First Amendment. (See Motion.)

A. Free Exercise

The Orders restrict indoor religious services. (Complaint, Exhibit M.) They also restrict "comparable secular gatherings, including lectures, concerts, movie showings, spectator sports, and theatrical performances." South Bay United Pentecostal Church v. Newsom, 140 S. Ct. 1613, 1613-14 (2020) (Roberts, C.J., concurring); see also Elim Romanian Pentecostal Church v. Pritzker, 962 F.3d 341, 346 (7th Cir. 2020); ("[Worship services] seem most like other congregate functions that occur in auditoriums, such as concerts and movies. Any of these indoor activities puts members of multiple families close to one another for extended periods, while invisible droplets containing the virus may linger in the air.") Because religious activities are only restricted similarly to or less than comparable non-religious activities, the Orders are neutral on their face and in application. See Stormans, Inc. v. Wiesman, 794 F.3d 1064, 1079 (9th Cir. 2015) (holding that a law is only fatally underinclusive if it prohibits religious conduct but not "comparable secular conduct").

Plaintiffs argue that the Orders are not neutral in application because they restrict indoor religious services but not outdoor protests. (Reply at 1.) But because indoor activities carry a much greater risk of COVID-19 spread, indoor religious services are not comparable to outdoor protests. Accordingly, how the Orders treat outdoor protests is irrelevant to whether the Orders' restriction on indoor religious services is constitutional.

Likewise, whether the Governor encouraged outdoor protests that violated earlier stay-at-home orders is irrelevant. (See Motion at 3–7.) Plaintiffs make no allegation that the Governor enforced restrictions on indoor religious services while encouraging *comparable* secular indoor activities. See Stormans, 794 F.3d at 1083; Stormans v. Selecky, 586 F.3d 1109, 1125 (9th Cir. 2009).[3] Even if the Governor did encourage the protests in violation of earlier stay-at-home orders—which Plaintiffs fail to present any evidence of—as outdoor activities, the protests are not equivalent to indoor religious services.[4]

[3] At the hearing, Plaintiffs' counsel argued that he believed that outdoor protests were in fact riskier than indoor religious services. Plaintiffs' counsel, however, is not an expert on disease spread. And Plaintiffs have failed to submit any expert testimony supporting this proposition. Moreover, the Governor's determination that indoor activities carry the greatest risk is entitled to deference. See Marshall v. United States, 414 U.S. 417, 427 (1974) (holding that state officials should be awarded broad latitude when they "undertake[] to act in areas fraught with medical and scientific uncertainties.")

[4] The only evidence Plaintiffs submit in favor of the Motion is their verified Complaint. Thalheimer v. City of San Diego, 645 F.3d 1109, 1116 (9th Cir. 2011) ("A verified complaint may be treated as an affidavit, and, as such, it is evidence that may support injunctive relief.") (continued . . .)

Plaintiffs additionally contend that the Orders are discriminatory because they permit Plaintiffs to distribute food and provide indoor shelter—activities that Plaintiffs argue are comparable to indoor religious services. But Plaintiffs fail to provide any concrete information about the nature of these allegedly permissible activities, only stating vaguely that "member churches in California have programs that provide food support for the hungry, financial and ministry support for those in need, and also biblical and social-service-type counseling for members of their communities throughout California." (Complaint ¶ 55.) Without more, Plaintiffs have failed to establish that these activities are anything like indoor worship. And the Court concludes they likely are not: distributing food at a church is analogous to a grocery store, not an indoor event such as a concert. Finally, the Governor has determined that these activities are essential services, and therefore must be exempted from other guidelines for the health and safety of California residents—a determination which is entitled to this Court's deference.

Finally, the restriction on indoor chanting and singing applies equally to religious events and secular events. Plaintiffs argue that this law applies unequally because religious singing is more likely to occur indoors than singing at protests. A law is not discriminatory simply because it burdens religious practice greater than secular activities, so long as religious activities are treated the same as comparable secular activities. Again, because indoor secular singing is restricted to the same extent that indoor religious singing is restricted, the Orders are neutral in application.

Because the Orders restrict indoor religious services similarly to or less than comparable secular activities, it is subject to rational basis review, which it easily passes: by limiting certain activities, the Orders reduce person-to-person contact, which in turn furthers the interest of reducing COVID-19 spread. Accordingly, Plaintiffs are not likely to succeed on the merits of their Free Exercise Claim.

B. Establishment Claim

Plaintiffs argue that Defendant violated the Establishment Clause by subjecting religious institutions to disparate treatment. (Motion at 21–22.) But, as the Court concluded above, the Orders treat religious services the same as comparable secular activities. Accordingly, Plaintiffs are not likely to succeed on the merits of their Establishment Clause Claim.

//
//

However, a verified complaint is treated as Plaintiffs' own affidavit. In this case, because the Complaint is verified by Che Ahn, Pastor of Plaintiff Harvest Rock Church and President of Plaintiff Harvest International Ministries, it functions as Mr. Ahn's affidavit. However, the Complaint fails to establish Mr. Ahn's foundation for any assertions other than those directly related to Harvest Rock Church and Harvest International Ministries. Accordingly, Plaintiffs have failed to establish a factual basis for their allegations regarding the protests, Defendant's alleged statements, and scientific facts related to the spread of COVID-19, among other things.

C. Free Speech Claim

Finally, Plaintiffs argue that the Orders are content-based restrictions on speech. However, they fail to explain *how* they are content based. And the Court concludes they are not: the Orders restrict activities based on the location and nature of the gathering, rather than the content of the speech at those gatherings. Accordingly, Plaintiffs are not likely to succeed on the merits of their Free Speech Claim.

Plaintiffs are not likely to succeed on the merits of their claims. Accordingly, the Court need not consider the remaining factors.

IV. CONCLUSION

For the reasons above, the Court DENIES Plaintiffs' Motion.

IT IS SO ORDERED.