

CASE NO. _____

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

ORANGE COUNTY BOARD OF EDUCATION, CHILDREN'S
HEALTH DEFENSE, and CHILDREN'S HEALTH DEFENSE-
CALIFORNIA CHAPTER,

Petitioners,

vs.

GAVIN NEWSOM, in his official capacity as Governor of California,

Respondent.

**VERIFIED PETITION FOR WRIT OF MANDATE;
MEMORANDUM OF POINTS AND AUTHORITIES**

IMMEDIATE RELIEF REQUESTED
(Palma Notice Requested)

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IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS
California Rules of Court, rules 8.208, 8.490(i), 8.494(c), 8.496(c), or
8.498(d)

Supreme Court Case Caption:

ORANGE COUNTY BOARD OF EDUCATION, CHILDREN'S
HEALTH DEFENSE, and CHILDREN'S HEALTH DEFENSE-
CALIFORNIA CHAPTER,

Petitioners,

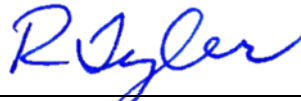
vs.

GAVIN NEWSOM, in his official capacity as Governor of California,
Respondent.

Please check here if applicable:

There are no interested entities or persons to list in this Certificate as
defined in the California Rules of Court.

Dated: August 10, 2021



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TABLE OF CONTENTS

VERIFIED PETITION WRIT OF MANDATE; MEMORANDUM OF POINTS AND AUTHORITIES 8

I. INTRODUCTION..... 8

II. PETITION 10

III. PRAYER FOR RELIEF 17

IV. VERIFICATION 19

V. CONCLUSION 20

VI. ARGUMENT 21

 A. HAVING DETERMINED THAT CALIFORNIANS SLOWED THE SPREAD OF COVID-19 AND SAVED THE HEALTH CARE SYSTEM, THE GOVERNOR MUST TERMINATE THE STATE OF EMERGENCY. 21

 B. INTERPRETING THE EMERGENCY SERVICES ACT TO LET THE GOVERNOR TO KEEP AN EMERGENCY IN PLACE INDEFINITELY, FOR “FLEXIBILITY,” WOULD ELIMINATE THE ACT’S ONLY SAFEGUARD AND RENDER IT UNCONSTITUTIONAL..... 24

 C. THE COURT CAN ORDER THE GOVERNOR TO TERMINATE THE EMERGENCY AND IT SHOULD EXERCISE ITS ORIGINAL JURISDICTION TO DO SO. 29

 D. GIVEN THE EXIGENCY AND THE IMPORTANCE OF THESE ISSUES. IMMEDIATE RELIEF IS WARRANTED. 33

VII. CONCLUSION..... 38

CERTIFICATE OF SERVICE..... 40

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Anderson v. Superior Court</i>	
(1989) 213 Cal. App. 3d 1321 [262 Cal.Rptr. 405]	29
<i>Apple Inc. v. Superior Court</i>	
(The Police Retirement Sys. of St. Louis) (2017) 18 Cal. App. 5th 222 [227 Cal.Rptr.3d 8]	33
<i>Blumenthal v. Bd. of Med. Examiners</i>	
(1962) 57 Cal. 2d 228 [18 Cal.Rptr. 501]	6
<i>Brown v. Fair Political Practices Commission</i>	
(2000) 84 Cal. App. 4th 137 [100 Cal.Rptr.2d 606]	30
<i>Bush v. Schiavo</i>	
(Fl. 2004) 885 So.2d 321 [29 Fla. L. Weekly S515]	24
<i>Campaign for Quality Educ. v. State</i>	
(2016) 246 Cal. App. 4th 896 [209 Cal.Rptr.3d 888]	32, 34
<i>Carmel Valley Fire Prot. Dist. v. State</i>	
(2001) 25 Cal. 4th 287 [105 Cal.Rptr. 2d 636]	25
<i>Carson Mobilehome Park Owners’ Assn. v. City of Carson</i>	
(1983) 35 Cal. 3d 184 [197 Cal.Rptr. 284]	26
<i>Clean Air Constituency v. State Air Resources Bd.</i>	
(1974) 11 Cal. 3d 801 [114 Cal.Rptr. 577]	26
<i>Corbett v. Superior Court</i>	
(Bank of Am., N.A.) (2002) 101 Cal. App. 4th 649 [125 Cal.Rptr.2d 46]	33
<i>County of Sacramento v. Hickman</i>	
(1967) 66 Cal.2d 841 [59 Cal.Rptr. 609]	33
<i>County of Sonoma v. Cohen</i>	
(2015) 235 Cal. App. 4th 42 [184 Cal.Rptr.3d 911]	28

<i>Gundy v. United States</i>	
(2019) – U.S. – [139 S. Ct. 2116, 2123, 204 L.Ed.2d 522]	25
<i>Guzman v. Cty. of Monterey</i>	
(2009) 46 Cal. 4th 887 [95 Cal.Rptr.3d 183]	22
<i>Jenkins v. Knight</i>	
(1956) 46 Cal.2d 220 [293 P.2d 6]	32
<i>Joint Anti-Fascist Refugee Committee v. McGrath</i>	
(1951) 341 U.S. 123 [71 S.Ct. 624]	32
<i>Kugler v. Yocum</i>	
(1968) 69 Cal.2d 371	27
<i>Lazan v. County of Riverside</i>	
(2006) 140 Cal. App. 4th 453 [44 Cal.Rptr.3d 394]	22
<i>Legislature v. Eu</i>	
(1991) 54 Cal. 3d 492 [286 Cal.Rptr. 283]	30
<i>Los Angeles Dredging Co. v. Long Beach</i>	
(1930) 210 Cal. 348 [71 A.L.R. 161]	21
<i>Love v. State Dep’t of Educ.</i>	
(2018) 29 Cal. App. 5th 980 [240 Cal.Rptr.3d 861]	35
<i>Macias v. State</i>	
(1995) 10 Cal. 4th 844 [42 Cal.Rptr.2d 592]	30
<i>Malibu W. Swimming Club v. Flournoy</i>	
(1976) 60 Cal. App. 3d 161 [131 Cal.Rptr. 279]	21,22
<i>Martin v. Municipal Court</i>	
(People of the State of Cal.) (1983) 148 Cal. App. 3d 693 [196 Cal.Rptr. 218]	21
<i>Mathews v. Becerra</i>	
(2019) 8 Cal. 5th 756 [257 Cal.Rptr.3d 2]	35
<i>McClung v. Employment Dev. Dep’t</i>	
(2004) 34 Cal. 4th 467 [20 Cal.Rptr.3d 428]	32

<i>McGautha v. California</i>	
(1971) 402 U.S. 183 [28 L.Ed.2d 711]	29
<i>Nat’l Tax-Limitation Com. v. Schwarzenegger</i>	
(2003) 113 Cal. App. 4th 1266 [8 Cal.Rptr.3d 4]	22, 23, 31, 32
<i>Newsom v. Superior Court</i>	
(Gallagher) (2021) 63 Cal. App. 5th 1099 [278 Cal.Rptr.3d 397] .	26, 27
<i>Ng v. Superior Court</i>	
(The People) (1992) 4 Cal. 4th 29 [13 Cal.Rptr.2d 856]	33
<i>Palma v. United States Industrial Fasteners, Inc.</i>	
(1984) 36 Cal. 3d 171 [203 Cal.Rptr. 626]	33
<i>People ex rel. Lockyer v. Sun Pacific Farming Co.</i>	
(2000) 77 Cal. App. 4th 619 [92 Cal.Rptr.2d 115]	25
<i>Raven v. Deukmejian</i>	
(1990) 52 Cal. 3d 336 [276 Cal.Rptr. 326]	30
<i>Samples v. Brown</i>	
(2007) 146 Cal. App. 4th 787 [53 Cal.Rptr.3d 216]	25
<i>Serrano v. Priest</i>	
(1971)5 Cal.3d 584 [96 Cal.Rptr. 601]	34
<i>Steen v. App. Div. of Superior Court</i>	
(People) (2014) 59 Cal. 4th 1045 [175 Cal.Rptr.3d 760]	28
<i>Tandon v. Newsom</i>	
(2021) 141 S. Ct. 1294 [209 L.Ed.2d 355]	31
<i>Wilke & Holzheise, Inc. v. Dep’t of Alcoholic Beverage Control</i>	
(1966) 65 Cal. 2d 349 [55 Cal.Rptr. 23]	25
<i>Wilkinson v. Madera Community Hospital</i>	
(1983) 144 Cal. App. 3d 436 [192 Cal.Rptr. 593]	26
Statutes	
California Code of Civil Procedures § 1085	16
California Code of Civil Procedures § 1086	16

California Government Code § 14	22
California Government Code § 8558	21
California Government Code § 8629	12, 22
California Rules of Court, Rule 8.208	2
California Rules of Court, Rule 8.486	16
California Rules of Court, Rule 8.490(i)	2
California Rules of Court, Rule 8.494(c)	2
California Rules of Court, Rule 8.496(c)	2
California Rules of Court, Rule 8.498(d)	2
 Other	
California Constitution, Wilke VI, § 10	16
California Constitution, Article III, § 3	24

**VERIFIED PETITION WRIT OF MANDATE; MEMORANDUM OF
POINTS AND AUTHORITIES**

To the Honorable Tani Cantil-Sakauye, Chief Justice of the Supreme Court of California and to the Honorable Associate Justices of the Supreme Court of California:

I. INTRODUCTION

This Petition does not focus on any specific policy issues. It concerns fundamental issues of governance that are the foundation of American self-government. It seeks to restore the People’s right to participate in their government, to have policy decisions made in public by the People’s elected officials and not behind the scenes by a revolving door of unelected technocrats.

Last fall, the Orange County Board of Education asked this Court to exercise original jurisdiction to decide whether Governor Gavin Newsom’s order to close all in-person schooling across California was lawful. The Court declined to hear the case. As a result, despite little risk of harm from in-classroom instruction, millions of children suffered through a year of virtual school that many people did not want but followed because the State ordered it.

Last winter, San Bernardino County asked the Court to order the Governor to terminate his stay-at-home order and end the state of emergency. The Governor’s office also asked the Court to hear the case. Again, the Court declined. Now, more than eighteen months after the pandemic began, Californians are living in a seemingly perpetual quasi-state of emergency, with ballparks full but mask mandates returning and millions of families waiting to see whether, and how, their children will be educated this school

year. These policy decisions continue to be made not by elected officials but, by and large, by unelected public health officials in Sacramento or Washington, D.C., who operate behind closed doors with little transparency about how they make decisions and no opportunity for public debate.

California's government is not supposed to function like this. Policy choices are supposed to be made by the Legislature, through the legislative process, with the executive branch administering the law. Of course, the Legislature can delegate authority to the Governor or administrative agencies under certain circumstances. But, even then, the government is supposed to follow a decision-making process that is transparent and which gives the People a voice in the process. It has not been doing that during the past eighteen months because the Governor suspended the normal rules of government under the California Emergency Services Act.

On June 11, the Governor issued an executive order that said Californians had successfully slowed the spread of COVID-19 and protected the health care system from collapse, the threat that caused him to declare the state of emergency. But he refused to terminate the state of emergency and said the emergency would continue indefinitely to give state health officials "flexibility" in their policymaking.

That is not proper. The Emergency Services Act says the Governor "shall" terminate the state of emergency at the earliest possible moment. This is a mandatory duty not a discretionary one. The Governor does not have the right to continue the state of emergency indefinitely. Interpreting the Emergency Services Act to give the Governor such discretion, simply for his convenience, would cause it to violate the non-delegation doctrine. The Third District Court of Appeal recognized as much when it recently ruled on the constitutionality of the Act. It cited the Governor's obligation to terminate

the emergency at the earliest possible moment as an important safeguard that saved the Act from violating the separation of powers.

Determining whether the Governor violated his duty to terminate the COVID-19 state of emergency now that he has effectively declared the emergency over is a matter of great public importance that this Court should address in the first instance. Deciding this Petition will also help resolve other cases going forward. Only one other court (the Third District Court of Appeal in 2003) has considered the scope of the Governor’s duty to terminate a state of emergency in detail and that opinion was de-published after a new governor terminated the emergency.

Time is of the essence. Petitioners educate and advocate for thousands of California’s children. They take the Governor at his word. With the successful slowing of the spread so COVID-19 did not overwhelm the health care system, it is time for government to return to normal. Given the importance of this issue, the Court should exercise original jurisdiction to hear the Petition and order the Governor to terminate the COVID-19 state of emergency.

II. PETITION

1. Early in 2020, California public health officials became aware that a novel respiratory virus—dubbed COVID-19—was spreading in the state and could trigger a pandemic. Exhibit A to Petition.

2. On March 4, 2020, Governor Gavin Newsom declared a state of emergency related to COVID-19. The Governor stated that he declared a state of emergency, pursuant to his powers under the California Emergency Services Act, “to combat the spread of COVID-19, which will require access to services, personnel, equipment, facilities, and other resources, potentially including resources beyond those currently available to prepare for and

respond to any potential cases and the spread of the virus” Exhibit B, at p. 47. The press release announcing the declaration said the Governor issued it specifically “to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for broader spread of COVID-19.” Exhibit C, at p. 52.

3. Emphasizing this focus on preparation for the spread of COVID-19, the Governor said: “The State of California is deploying every level of government to help identify cases and slow the spread of this coronavirus. This emergency proclamation will help the state further prepare our communities and our health care system in the event it spreads more broadly.” *Ibid.*

4. For the next fifteen months, the Governor and public health officials asserted unprecedented powers, including issuing a “stay at home” order that directed all Californians to stay inside their homes, indefinitely, unless they left to do something the government had deemed “essential.” Exhibit D.

5. During this time, the Governor also asserted his power under the Emergency Services Act to suspend the rulemaking procedures in the Administrative Procedure Act, thus exempting public health and other administrative officials from the normal decision-making process in exercising their quasi-legislative regulatory powers. Exhibits B, E.

6. On June 11, 2021, the Governor declared that “the effective actions of Californians over the past fifteen months have successfully curbed the spread of COVID-19, resulting in dramatically lower disease prevalence and death [] in the State” Exhibit E, at p. 57.

7. The Governor’s June 11 order also said that it was time “for a full reopening of California” and thus the Governor terminated the stay-at-home order he had issued on March 19, 2020. *Id.* at pp. 57-58. He said “California is turning the page on this pandemic” Exhibit F, at p. 60. He also stated that “[b]y the end of September, nearly 90 percent of the executive actions taken since March 2020 will have been lifted.” *Ibid.*

8. The June 11 executive order did not terminate the COVID-19 related state of emergency. Instead, the Governor stated that he would continue the state of emergency indefinitely “to preserve the flexibility to modify public health directives and respond to changing conditions and to new and changing health guidance from the Centers for Disease Control” Exhibit E, at p. 57.

9. The June 11 executive order also continued to suspend the rulemaking procedures for state agencies, including state health officials, indefinitely. *Ibid.*

10. The Governor’s refusal to terminate the COVID-19 state of emergency violates California law. The Emergency Services Act states: “The Governor shall proclaim the termination of a state of emergency at the earliest possible moment that conditions warrant.” Cal. Govt. Code § 8629. This is a mandatory duty, not a discretionary one.

11. Curbing the spread of the novel coronavirus was the condition that led to the declaration of emergency on March 4, 2020. The Governor found that Californians had “successfully curbed the spread” of COVID-19 by June 11, 2021. Thus, the Governor has a ministerial duty to terminate the state of emergency. Even if the Governor’s duty to terminate the state of emergency is discretionary, his refusal to terminate it after June 11, 2021, constitutes an abuse of discretion.

12. Although the Governor cited the need for “flexibility” in dealing with COVID-19 in the future, that is not a legitimate basis to exercise emergency powers indefinitely.

13. The Governor’s refusal to terminate the COVID-19 emergency after June 11, 2021, is also inconsistent with statements his office has made in pending legal proceedings. For example, last week, the Governor’s office successfully moved to dismiss a case in Ventura County, arguing that the case is moot “because the conditions that led the State to adopt the Blueprint [for a Safer Economy last August] and other health orders imposing capacity restrictions are now absent.” Exhibit H, at p. 93.

14. To avoid any doubt, the Governor’s brief in the Ventura case stated: “Because of widespread vaccinations, infection rates [] in California have plummeted, and the State no longer faces a threat that the State’s health care system will be overwhelmed. To the contrary, all available evidence suggests a resurgence of cases, hospitalizations, and deaths to the level that prompted the Blueprint and the other now-rescinded public health directives at issue is unlikely to occur” *Id.* at p. 94.

15. The Orange County Board of Education is a five-member elected board of trustees which serves some of Orange County’s most vulnerable student populations and provides support and mandated fiscal oversight to 27 school districts serving more than 600 schools and nearly 500,000 students. The Board provides direct instruction to students through its own alternative and special education programs. The Board, through a majority (unopposed) vote, brings this instant petition out of necessity as they are in an irreconcilable position where they must choose between complying with the ever-changing directives from state public health officials, in violation of the constitutional rights of their students, or upholding the

Constitution by doing what is best for their students, subjecting themselves to criminal culpability, expulsion from office, and loss of funding. The Board has been adversely affected by emergency government orders that have dictated the conditions under which children in their schools can be educated. Declaration of Mari Barke dated August 9, 2021 (“Barke Decl.”), ¶¶ 2-4.

16. Children’s Health Defense (“CHD”) is a not-for-profit 26 U.S.C. § 501(c)(3) membership organization incorporated under the laws of the State of Georgia, and headquartered at 1227 North Peachtree Parkway, Suite 202, Peachtree City, Georgia 30269. CHD was founded in 2015 (under a different name) to educate the public about the risks and harmful effects of chemical exposures upon prenatal and children’s health and to advocate for social change both legislatively and through judicial action. CHD does not oppose all vaccines but instead advocates for transparency and tighter safety standards in children’s health, particularly since pharmaceutical companies have been given broad statutory immunity from tort liability related to vaccines, including the COVID-19 vaccines. Declaration of Mary Holland dated August 9, 2021 (“Holland Decl.”), ¶¶ 2-3.

17. Children’s Health Defense-California Chapter (“CHD-CA”) is a not-for-profit 26 U.S.C. § 501(c)(3) membership organization incorporated under the laws of the State of California, and headquartered at P.O. Box 407, Ross, California 94957. CHD-CA was founded in 2020 to educate the public about the risks and harmful effects of environmental and chemical exposures upon prenatal and children’s health and to advocate for social change both legislatively and through judicial action. CHD-CA does not oppose all vaccines but instead advocates for transparency and tighter safety standards in children’s health, particularly since pharmaceutical companies have been given broad statutory immunity from tort liability related to vaccines,

including the COVID-19 vaccines. Declaration of Alix Mayer dated August 10, 2021 (“Mayer Decl.”), ¶¶ 2-3.

18. CHD was established and is run by Robert F. Kennedy, Jr., and a group of parents whose children have been affected by environmental exposures. CHD operates the <https://childrenshealthdefense.org> website and publishes a “weekly wrap up” with research articles and opinion pieces about health issues that affect children, including issues related to the novel coronavirus, COVID-19. Through these publications and the activities of its California chapter, CHD represents the interests of thousands of children and families in California. Holland Decl., ¶¶ 4-5; Mayer Decl., ¶¶ 4-5.

19. Petitioners disagree with many of the public health orders that have been used to dictate the conditions under which California’s children live and are educated. They also believe that these policy decisions should be made at the local level or in individual settings, not by bureaucrats in Sacramento or Washington, D.C., acting without any transparency or public comment pursuant to a perpetual state of emergency. Barke Decl., ¶ 4; Holland Decl., ¶ 5; Mayer Decl., ¶ 5. Thus, Petitioners have standing to bring this Petition and a beneficial interest in the relief it seeks.

20. The Governor issued the state of emergency and is responsible for terminating it.

21. The Governor has refused to terminate the state of emergency despite his obligation to do so.

22. Petitioners will suffer irreparable harm if the Court does not order the Governor to terminate the coronavirus state of emergency based on his finding that Californians had “successfully curbed the spread of COVID-19” during the past fifteen months. No amount of monetary damages can compensate the children who Petitioners educate and advocate for. Nothing

can replace the opportunities they have lost under the State’s emergency orders and which they will continue to be deprived of under the Governor’s permanent pandemic. In any event, the Governor has immunity from damages claims under the Emergency Services Act. Furthermore, the Petition raises questions of first impression about: (1) whether the Governor has a ministerial or discretionary duty to terminate a state of emergency after he announces that the conditions that led to its issuance have passed; (2) if the duty is discretionary, whether the Governor abuses that discretion by extending the state of emergency indefinitely despite changed conditions; and (3) whether a court can order the Governor to terminate a state of emergency if he violates his duty to do so. These are issues of great public importance that justify writ relief.

23. Indeed, as a result of the Governor’s indefinite suspension of the APA rulemaking procedures, state health officials have continued to issue health directives to California schools without any public debate or transparency about their decision-making process. This has resulted in a dysfunctional process in which, for example, state health officials will announce a rule for all schools—such as mandating masks and removing students who do not wear them—but quickly change the policy after public outcry. Exhibits I, J.

24. The Court has concurrent original jurisdiction over the Petition pursuant to article VI, section 10 of the California Constitution, and under sections 1085 and 1086 of the California Code of Civil Procedure as well as Rule 8.486 of the California Rules of Court.

25. Petitioners filed the Petition less than 60 days after the Governor declared that Californians had effectively slowed the spread of

COVID-19, but refused to terminate the state of emergency. Thus, the Petition is timely.

26. This Court is the ultimate arbiter of state law. It should assume original jurisdiction and decide whether the Governor is obligated to terminate the state of emergency based on the findings set forth in his June 11 executive order. Time is of the essence. The next school year is about to start. State health officials still have not committed to allowing in-person instruction to occur throughout the year and they recently ordered that all students wear masks at all times, a policy Petitioners disagree with. Moreover, further lockdowns are threatened on an almost daily basis, casting a cloud over the next school year. Therefore, the Court should issue a *Palma* notice and set this case for further briefing and argument, if needed, as quickly as possible.

III. PRAYER FOR RELIEF

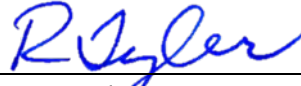
Therefore, Petitioners respectfully requests that the Court:

1. Grant the Petition;
2. Issue a writ of mandate ordering the Governor to terminate the declaration of emergency he issued on March 4, 2020; and

3. Award Petitioners their costs and other appropriate relief, as well as any other relief the Court determines is just and proper.

Dated: August 10, 2021

Respectfully Submitted,



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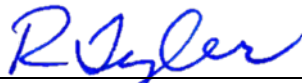
IV. VERIFICATION

I, Robert H. Tyler., declare as follows:

1. I am an attorney licensed to practice law before all courts in the state of California and am a partner with the law firm Tyler & Bursch LLP, counsel of record to Petitioners Orange County Board of Education, Children's Health Defense and Children's Health Defense-California Chapter in this matter. As a lawyer for the Petitioners in this action, I make this verification because I am familiar with the proceedings that gave rise to this Petition.

2. I have read the foregoing petition for a writ of mandate. It is true of my own knowledge except as to those matters that are stated on information and belief. As to those matters, I believe them to be true. If called as a witness, I could and would testify competently to these facts.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that this verification was executed on August 10, 2021, at Murrieta, California.



Robert H. Tyler

V. CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court grant the relief sought in the Verified Petition for a Peremptory Writ of Mandate in the First Instance and Request for Immediate Stay.

Dated: August 10, 2021

Respectfully Submitted,



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VI. ARGUMENT

The Petition should be granted because, based on his own statements and actions, the Governor has a duty to terminate the state of emergency that he declared on March 4, 2020. His refusal to terminate the emergency despite the changed conditions violates a ministerial duty, or constitutes an abuse of discretion, that the Court can enforce through a writ of mandate.

A. Having Determined that Californians Slowed the Spread of COVID-19 and Saved the Health Care System, the Governor Must Terminate the State of Emergency.

During the past eighteen months, the Governor has asserted unprecedented powers under the Emergency Services Act. There has been little litigation under the Act, but a few things are clear.

First, the Act gives the Governor power to act quickly not at all times but during a condition of “extreme peril to the safety of persons and property within the state . . .” (Gov’t Code § 8558, subd. (b).) *Second*, the Governor’s powers are not unlimited. They focus on the “fundamental role of government to provide broad state services in the event of emergencies resulting from conditions of disaster or of extreme peril to life, property, and the resources of the state.” (*Martin v. Municipal Court (People of the State of Cal.)* (1983) 148 Cal. App. 3d 693, 696 [196 Cal.Rptr. 218].) *Third*, the term “emergency” has been construed strictly; it “implies that a sudden or unexpected necessity requires speedy action.” (*Los Angeles Dredging Co. v. Long Beach* (1930) 210 Cal. 348, 356 [71 A.L.R. 161].) When “the statute speaks of an emergency affecting the public health or safety, the vital element is not official prescience or its lack but rather the acuteness of the threat to the public interest.” (*Malibu W. Swimming Club v. Flourney* (1976) 60 Cal.

App. 3d 161, 166 [131 Cal.Rptr. 279].) This focus on the *acuteness* of the threat means that, by definition, an emergency cannot be indefinite.

The Act reflects these principles by requiring that the Governor “proclaim the termination of a state of emergency at the earliest possible date that conditions warrant.” (Gov’t Code § 8629.) This Court has never decided whether the Governor’s obligation to terminate a state of emergency is discretionary or mandatory. The Act uses the word “shall.” “The word ‘shall’ indicates a mandatory or ministerial duty.” (*Lazan v. County of Riverside* (2006) 140 Cal. App. 4th 453, 460 [44 Cal.Rptr.3d 394]; but see *Guzman v. Cty. of Monterey* (2009) 46 Cal. 4th 887, 898-899 [95 Cal.Rptr.3d 183] [stating that “this term’s inclusion in an enactment does not necessarily create a mandatory duty; there may be other factors that indicate that apparent obligatory language was not intended to foreclose a governmental entity’s or officer’s exercise of discretion,” cleaned up].) However, in the only case to analyze this language as part of the Emergency Services Act, the Third District Court of Appeal concluded that the Governor does not have a “ministerial duty to terminate a state of emergency under section 8629 until he determines, in the exercise of his discretion, that conditions warrant such an action” (*Nat’l Tax-Limitation Com. v. Schwarzenegger* (2003) 113 Cal. App. 4th 1266 [8 Cal.Rptr.3d 4, 14], review denied but ordered de-published (Mar. 17, 2004).)

This conclusion cannot be squared with the Act’s language or canons of statutory construction, including the Government Code’s own provision that “[s]hall’ is mandatory and ‘may’ is permissive.” (Gov’t Code, § 14.) Apparently recognizing that, *Schwarzenegger* also held that, while partially a discretionary duty, mandamus would “lie to correct an abuse of discretion by the Governor in making that foundation[al] determination” about whether

an emergency still exists. (*Schwarzenegger, supra*, 8 Cal.Rptr.3d at p. 14.) For example, if “one of the requisite conditions for declaring the state of emergency in the first place ceases to exist, [] it would be an unreasonable exercise of discretion for the Governor to make any choice other than to determine that conditions now warrant termination of the state of emergency he proclaimed” (*Id.* at p. 15.)

Schwarzenegger arose out of Governor Gray Davis’ declaration of a state of emergency during the 2001 Enron-fueled electricity crisis. This Court denied review but ordered the Court of Appeal’s opinion to be de-published because, by the time the Third District issued it, a new governor had been elected and terminated the emergency. Thus, there was no live controversy to decide, and this Court apparently believed that the legal question of whether, and under what circumstances, a court could order the Governor to terminate a state of emergency was unlikely to arise again. They do now. In fact, there is a greater need for judicial action here, as the Governor has already announced that there is no longer an emergency that requires immediate government action. Exhibit E, at p. 57. Thus, whether the Governor’s duty to terminate the state of emergency is ministerial or discretionary—an issue this Court should decide—he has violated it.

The Governor may try to limit the statements from his June 11 executive order. But he has made similar statements in litigation that challenges his emergency orders. For example, the Governor convinced a court in Ventura County to dismiss a church’s challenge to its emergency orders, saying that, apart from limited guidance issued by public health officials pursuant to the Health and Safety Code, the State “will not issue any other mandatory health directives” related to COVID-19. Exhibit H, at p. 88. Why not? The State said the emergency orders were issued last year because

“the State had no other immediate options to deal with the COVID-19 emergency at the time, when there was neither a cure for the disease nor a vaccine. But now, case and hospitalization rates are dramatically lower, and the State now has better options to control the pandemic.” *Id.* at p. 93.

If this were not clear enough, the Governor emphasized in the Ventura case that “the State no longer faces a threat that the State’s health care system will be overwhelmed. To the contrary, all available evidence suggests a resurgence of cases, hospitalizations, and deaths to the level that prompted the Blueprint [for a Safer Economy last August] and the other now-rescinded public health directives at issue is unlikely to occur in light of the percentage of eligible Californians who are fully vaccinated.” *Id.* at p. 94.

If the Governor believes that the conditions that led to the declaration of a state of emergency no longer exist, then he has a duty to terminate it. The Act says that. It does not give the Governor discretion to extend the emergency for convenience or flexibility. The Court should grant review to decide this important issue and to order the Governor to comply with the law.

B. Interpreting the Emergency Services Act to Let the Governor Keep an Emergency in Place Indefinitely Would Eliminate the Act’s Only Safeguard and Render it Unconstitutional.

It is critical for the Court to decide this issue, as interpreting the Emergency Services Act to give the Governor the power to continue a state of emergency indefinitely, after the condition that spawned the emergency has passed, would cause the Act to violate the separation of powers.

In California, as in all American states, the “powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution.” (Cal. Const., art. III, § 3.) As a practical

matter, the three branches of government are interdependent, and one will occasionally do something that affects the others. That is fine as long as the action is “properly within its sphere” and has only the “incidental effect of duplicating a function or procedure delegated to another branch.” (*Carmel Valley Fire Prot. Dist. v. State* (2001) 25 Cal. 4th 287, 298 [105 Cal.Rptr. 2d 636], cleaned up.) But each branch has core functions, with this Court long recognizing that “truly fundamental issues should be resolved by the Legislature” and not by the executive or judicial branches. (*Wilke & Holzheise, Inc. v. Dep’t of Alcoholic Beverage Control* (1966) 65 Cal. 2d 349, 369 [55 Cal.Rptr. 23].)

The non-delegation doctrine ensures that. It “is rooted in the principle of separation of powers that underlies our tripartite system of Government.” (*Samples v. Brown* (2007) 146 Cal. App. 4th 787, 804 [53 Cal.Rptr.3d 216], as modified on denial of reh’g (Jan. 29, 2007), quotations omitted; cf. *Gundy v. United States* (2019) – U.S. – [139 S. Ct. 2116, 2123, 204 L.Ed.2d 522] [discussing non-delegation doctrine under federal Constitution].) “An unconstitutional delegation of legislative power occurs when the Legislature confers upon an administrative agency unrestricted authority to make fundamental policy decisions.” (*People ex rel. Lockyer v. Sun Pacific Farming Co.* (2000) 77 Cal. App. 4th 619, 632 [92 Cal.Rptr.2d 115], quotations omitted.) Although the non-delegation doctrine is most often invoked to challenge decisions made by an administrative agency, there is no reason it cannot apply when the Legislature delegates authority to the Governor. (See, e.g., *Bush v. Schiavo* (Fl. 2004) 885 So.2d 321, 332-335 [29 Fla. L. Weekly S515] [holding that law authorizing Florida governor to issue one-time stay to prevent withholding of food and water to comatose patient violated non-delegation doctrine].)

“Once it has established the law, the Legislature may delegate the authority to administer or apply the law.” (*Wilkinson v. Madera Community Hospital* (1983) 144 Cal. App. 3d 436, 442 [192 Cal.Rptr. 593].) “An unconstitutional delegation of authority occurs only when a legislative body (1) leaves the resolution of fundamental policy issues to others or (2) fails to provide adequate direction for the implementation of that policy.” (*Carson Mobilehome Park Owners’ Assn. v. City of Carson* (1983) 35 Cal. 3d 184, 190 [197 Cal.Rptr. 284].) “Underlying these rules is the belief that the Legislature as the most representative organ of government should settle insofar as possible controverted issues of policy and that it must determine crucial issues whenever it has the time, information and competence to deal with them.” (*Clean Air Constituency v. State Air Resources Bd.* (1974) 11 Cal. 3d 801, 817 [114 Cal.Rptr. 577].) Courts also must look closely to ensure that legislative delegations are not too broad. “Delegated power must be accompanied by suitable safeguards to guide its use and to protect against its misuse.” (*Blumenthal v. Bd. of Med. Examiners* (1962) 57 Cal. 2d 228, 236 [18 Cal.Rptr. 501].) “The absence of such standards, or safeguards ... renders effective review of the exercise of the delegated power impossible.” (*Ibid.*)

In *Newsom v. Superior Court (Gallagher)* (2021) 63 Cal. App. 5th 1099 [278 Cal.Rptr.3d 397, 404-410], the Third District Court of Appeal analyzed the Emergency Services Act in light of these principles. It could not find any standards to guide the exercise of emergency power. (*See id.* at p. 408 [stating that “the requirement of particularized standards delimiting the specific orders that the Governor may issue is antithetical to the purpose of the Emergency Services Act”].) Nonetheless, it held that, “of greater significance than ‘standards’ is the requirement that legislation provide

‘safeguards’ against the arbitrary exercise of quasi-legislative authority.” (*Ibid.*) It echoed this Court’s statement that “‘the most perceptive courts are motivated much more by the degree of protection against arbitrariness than by the doctrine about standards’” (*Id.* at p. 409, quoting *Kugler v. Yocum* (1968) 69 Cal.2d 371, 381 [71 Cal.Rptr.687].) But the only safeguard the Third District mentioned in *Newsom* was the Governor’s obligation to terminate the state of emergency “at the earliest possible date that conditions warrant” (*Id.* at p. 409.)

This duty was essential to the outcome of *Newsom*. The Third District distinguished the Governor’s powers under the Emergency Services Act from the powers granted to Michigan’s governor under a similar law, which the Michigan Supreme Court found unconstitutional, by saying that, unlike the Act, the Michigan law was “‘of indefinite duration.’” (*Id.* at p. 410, quoting *In re Certified Questions from the U.S. Dist. Ct., W. Dist. Ct. of Mich., S. Div.* (Mich. 2020) 506 Mich. 332, 365 [958 N.W.2d 1].) The court also emphasized the Michigan law’s “expansiveness, its indefinite duration, and its inadequate standards” as being insufficient to satisfy the non-delegation doctrine. (*Ibid.*, quotations omitted.) Importantly, the Third District did not construe the Governor’s obligation to terminate a state of emergency in California as a discretionary duty immune from judicial review. To the contrary, it held that, “[u]nlike the Michigan statute, the Emergency Services Act *obligates* the Governor to declare the state of emergency terminated as soon as conditions warrant” (*Ibid.*, emphasis added.)

For this safeguard to mean anything, the duty must be construed as ministerial, not discretionary, and it must require that the Governor act now. The June 11 order and the Governor’s statements in the Ventura case confirm

that there is no more emergency that requires immediate government action. The Governor simply wants “flexibility” in making policy decisions going forward. That may be convenient for the Governor and his staff, but while “efficiency and good government are laudable objectives, they must be pursued in conformity with our constitutional structure.” (*Steen v. App. Div. of Superior Court (People)* (2014) 59 Cal. 4th 1045, 1060 [175 Cal.Rptr.3d 760] (Liu, J., concurring).)

The Governor’s desire to have indefinite policy-making authority for all issues related to COVID-19 cannot be squared with the separation of powers. “Deciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice.” (*County of Sonoma v. Cohen* (2015) 235 Cal. App. 4th 42, 48 [184 Cal.Rptr.3d 911], quotations omitted.) These principles form the foundation of American government. The Constitution’s framers “believed the new federal government’s most dangerous power was the power to enact laws restricting the people’s liberty.” (*Gundy, supra*, 139 S. Ct. at p. 2134 (Gorsuch, J., dissenting).) “To address that tendency, the framers went to great lengths to make lawmaking difficult.” (*Ibid.*) They did this partially by creating a system of checks and balances. “Separation of powers protects liberty not only by creating checks and balances, but also by maintaining clear lines of political accountability.” (*Steen, supra*, 59 Cal. 4th at p. 1060 (Liu, J.); see also John F. Manning, *Textualism as a Nondelegation Doctrine* (1997) 97 Colum. L. Rev. 673, 708 [calling checks and balances “key elements of the constitutional scheme to preserve individual liberty”].)

As Justice William Brennan noted, basic policy choices must “be made by a responsible organ of state government. For if they are not, the very best that may be hoped for is that state power will be exercised, not upon the

basis of any social choice made by the people of the State, but instead merely ... at the whim of the particular state official wielding the power” (*McGautha v. California* (1971) 402 U.S. 183, 250 [28 L.Ed.2d 711] (Brennan, J., dissenting); see also *The Federalist* No. 49 (Cooke ed. 1961) p. 339 (J. Madison) [explaining that “the people are the only legitimate fountain of power”].)

Political accountability has been lacking during the COVID-19 pandemic, with decisions made by a revolving door of unelected public health officials in Sacramento and Washington, D.C., who frequently change their minds, as they did this summer when trying to decide whether, and how, children should attend school this year. Exhibits I, J. That may have been acceptable during the pandemic’s early stages, but it cannot last forever, especially when, as in the Michigan case, the Governor has interpreted the Emergency Services Act to give himself virtually unlimited power to control Californians’ lives.

C. The Court Can Order the Governor to Terminate the Emergency and It Should Exercise Its Original Jurisdiction to Do So.

The Court should exercise jurisdiction to decide these important constitutional issues in the first instance.

While not the normal course, the Court “has repeatedly recognized the intervention of an appellate court may be required to consider instances of a grave nature or of significant legal impact, or to review questions of first impression and general importance to the bench and bar where general guidelines can be laid down for future cases.” (*Anderson v. Superior Court* (1989) 213 Cal. App. 3d 1321, 1328 [262 Cal.Rptr. 405], citation omitted.) For example, the Court has exercised original jurisdiction over a

constitutional challenge to a ballot measure because it “involves issues of sufficient public importance to justify departing from our usual course.” (*Legislature v. Eu* (1991) 54 Cal. 3d 492, 500 [286 Cal.Rptr. 283]; see also *Raven v. Deukmejian* (1990) 52 Cal. 3d 336, 340 [276 Cal.Rptr. 326] [exercising original jurisdiction over writ petition to determine constitutionality of ballot proposition].)

Similarly, in *Brown v. Fair Political Practices Commission* (2000) 84 Cal. App. 4th 137 [100 Cal.Rptr.2d 606], the First District Court of Appeal exercised original jurisdiction to decide whether state law precluded then Oakland Mayor Jerry Brown from participating in decisions concerning a redevelopment project near his property. The court took the case “because (1) the petition raises novel issues of substantial public interest involving municipal government and the [Political Reform Act of 1974]; (2) the public interest in proceeding with redevelopment favors minimizing delay in resolving the issues; (3) there are no disputed issues of fact; and (4) the FPFC has not objected to proceeding in this court in the first instance.” (*Id.* at p. 140, fn. 2.)

Determining whether the Governor is obligated to end a state of emergency that has lasted nearly eighteen months, and which the Governor and unelected state health officials have used to take unprecedented control over people’s lives, is just as important. Furthermore, this is a novel issue, with the Court having addressed the scope of the Emergency Services Act only once before, in *Macias v. State* (1995) 10 Cal. 4th 844 [42 Cal.Rptr.2d 592], and with only one, de-published appellate court opinion discussing the nature of the Governor’s obligation to terminate a statement of emergency. There are no factual issues to resolve. The only material facts come from the Governor’s own words and pleadings. And the Governor will likely not

object to proceeding in this Court in the first instance, as he asked the Court to hear a similar petition filed by San Bernardino County last winter.

With *Newsom* also pending review, and fundamental issues of governance at stake, the Court should not ignore these important issues. It is well-suited to decide them. Many litigants have challenged the government’s COVID-19 restrictions under federal law and the Supreme Court has rejected California’s restrictions on in-person worshipping five times. (*Tandon v. Newsom* (2021) 141 S. Ct. 1294, 1297-1298 [209 L.Ed.2d 355] [listing them].) But that should not be the only route. In a famous 1977 article, Justice Brennan said that “state courts no less than federal are and ought to be the guardians of our liberties.” (William Brennan, *State Constitutions and the Protection of Individual Rights* (1977) 90 Harv. L. Rev. 489, 491.) Others have echoed this thesis. (Goodwin Liu, *State Courts and Constitutional Structure* (2019) 128 Yale L.J. 1304, 1313-1314 [observing that state constitutionalism is a “structural mechanism for American constitutional law to develop in a manner that accounts for ‘differences in culture, geography, and history,’” citation omitted].)

This Court is also best positioned to determine the politically sensitive question of whether a court has the power—period—to order the Governor to terminate a state of emergency. The parties litigated that issue in *Schwarzenegger*, with the Governor’s office arguing that such power “plainly and fatally intrudes upon the powers of the executive and legislative branches.” (*Schwarzenegger, supra*, 8 Cal.Rptr.3d at pp. 15-16, quotations omitted). The Third District disagreed, quoting this Court’s admonition that “no man is above the law” and “that where no discretion exists and a specific legal duty is imposed, ministerial in its character, an officer of the executive department of the government, like any other citizen is subject to judicial

process” to compel performance of the act. (*Id.* at p. 16, quoting *Jenkins v. Knight* (1956) 46 Cal.2d 220, 223 [293 P.2d 6].) *Schwarzenegger* went a step further and also held that mandamus could be used to correct an abuse of discretion by the Governor in making foundational determinations about whether a state of emergency exists. (*Ibid.*)

The Governor’s arguments in *Schwarzenegger* raised serious constitutional questions. After all, while conducting the State’s sovereign functions during a pandemic may fall primarily to the Governor, “interpreting the law is a judicial function.” (*McClung v. Employment Dev. Dep’t* (2004) 34 Cal. 4th 467, 470 [20 Cal.Rptr.3d 428]; see also *Campaign for Quality Educ. v. State* (2016) 246 Cal. App. 4th 896 [209 Cal.Rptr.3d 888, 923, 929] (Cuellar, J., dissenting from denial of review) [explaining that separation of powers has never “meant that we should strain to avoid our responsibility to interpret the state Constitution simply because the right at issue touches on concerns the Legislature might ultimately address”].) Judicial review matters more now than ever. Indeed, the “availability of judicial review is ... commonly cited as one of the most important and effective safeguards” in determining whether a law violates the non-delegation doctrine. (Jennifer Holman, *Re-Regulation at the CPUC and California’s Non-Delegation Doctrine: Did the CPUC Impermissibly Convey Its Power to Interested Parties?* (June 1997) 20 *Environ*s 58, 61.)

Judicial restraint is admirable. But, at its root, such deference reflects the respect the judiciary owes to elected officials, “those who also have taken the oath to observe the Constitution” (*Joint Anti-Fascist Refugee Committee v. McGrath* (1951) 341 U.S. 123, 164 [71 S.Ct. 624].) It does not call for blind allegiance to the unelected administrative state or to an executive who exceeds his powers. After nearly eighteen months it is time

for this Court to review the scope of the Governor’s power under the Emergency Services Act. This Petition, combined with *Newsom*, provides the best opportunity.

D. Given the Exigency and the Importance of These Issues.

Immediate Relief is Warranted.

Petitioners could have brought this Petition in the lower courts first. But the importance of the issue, combined with the exigency of the coming school year, warrants immediate relief, including expedited review by this Court pursuant to *Palma v. United States Industrial Fasteners, Inc.* (1984) 36 Cal. 3d 171, 180 [203 Cal.Rptr. 626].

“A writ of mandate should not be denied when the issues presented are of great public importance and must be resolved promptly.” (*Corbett v. Superior Court (Bank of Am., N.A.)* (2002) 101 Cal. App. 4th 649, 657 [125 Cal.Rptr.2d 46], quoting *County of Sacramento v. Hickman* (1967) 66 Cal.2d 841, 845 [59 Cal.Rptr. 609], cleaned up.) That is the case here. Writ review may also be utilized at the early stages of a case if a “significant issue of law is raised, or resolution of the issue would result in a final disposition as to the petitioner.” (*Apple Inc. v. Superior Court (The Police Retirement Sys. of St. Louis)* (2017) 18 Cal. App. 5th 222, 239 [227 Cal.Rptr.3d 8], quotations omitted.) That is also the case here. And, although not routine, this Court has said that the expedited *Palma* procedure may be used “when petitioner’s entitlement to relief is so obvious that no purpose could reasonably be served by plenary consideration of the issue—for example, when such entitlement is conceded or when there has been clear error under well-settled principles of law and undisputed facts—or when there is an unusual urgency requiring acceleration of the normal process.” (*Ng v. Superior Court (The People)* (1992) 4 Cal. 4th 29, 35 [13 Cal.Rptr.2d 856].)

That time has come in the COVID-19 pandemic. The new school year is starting. Petitioners want to give a voice to the students and families who otherwise have had little say in the State’s COVID-19 decision-making process. They want to provide their students with in-person instruction. They want to make their own decisions about how to do that safely. They want to be freed from the control of unelected bureaucrats who, acting behind the scenes and with almost no transparency, have used the COVID-19 emergency to impose unprecedented restrictions on children and educators. Terminating the state of emergency will enable that.

Terminating the state of emergency may also help courts avoid deciding many difficult constitutional cases that could arise during the next school year. For example, the Ninth Circuit Court of Appeals recently held that the State cannot block private schools from providing in-person instruction to students during the pandemic. (*Brach v. Newsom* (9th Cir. July 23, 2021) – F.4th –, 2021 WL 3124310, at *18 [21 Cal. Daily Op. Serv. 7455].) In light of that decision, private schools may bring even more lawsuits as long as the state of emergency lasts. That could lead to very different experiences for children who attend private schools and children who attend public schools, including in Orange County, undermining “a fundamental right under the California Constitution” that this Court has called “the lifeline of both the individual and society.” (*Campaign for Quality Educ.*, *supra*, 209 Cal.Rptr.3d at pp. 923, 928 (Liu, J., dissenting from denial of review), quoting *Serrano v. Priest* (1971)5 Cal.3d 584, 605 [96 Cal.Rptr. 601].)

Similarly, during the past century California extended some of the broadest rights imaginable to its citizens, including “an express right to ‘privacy’” that this Court has interpreted to “craft [] a privacy doctrine that

has no equivalent in federal constitutional law.” (Liu, *supra*, 128 Yale L.J. at p. 1327, citations omitted.) But some government officials, and even many private entities, want to ignore this development of state constitutional law and mandate COVID-19 vaccines to keep a job or enter public spaces. That will almost certainly lead to litigation, for “when a statute intrudes on a privacy interest protected by the state Constitution, it is our duty to independently examine the relationship between the statute’s means and ends.” (*Mathews v. Becerra* (2019) 8 Cal. 5th 756, 786-787 [257 Cal.Rptr.3d 2]; cf. *Love v. State Dep’t of Educ.* (2018) 29 Cal. App. 5th 980, 987 [240 Cal.Rptr.3d 861] [noting that each school vaccination requirement “was added to California code through legislative action, after careful consideration of the public health risks of these diseases, cost to the state and health system, communicability, and rates of transmission”].)

Demanding that COVID-19 policies be set through the normal process of government is not a fringe viewpoint. In 2019, Governor Newsom himself shared concerns about a bill that proposed giving state health officials, not local doctors, the authority to decide which children could forego vaccines before attending school, saying that “as a parent, he wouldn’t want a bureaucrat to make a personal decision for his family.” Exhibit K, at p. 113. Although the Governor eventually signed the legislation, he did so only after the Legislature added certain amendments and after robust debate about the bill’s costs and benefits. Terminating the state of emergency will allow COVID-19 policies to also be handled through the normal legislative and administrative decision-making process, with transparency and an opportunity for judicial review before policies take effect.

The Governor may ask the Court to wait just a little longer. He may promise that the end of the pandemic is near. But he made that promise before

and broke it. His “stay at home” order was supposed to last a few weeks, “not many, many months.” Exhibit L, at p. 119. It lasted sixteen months. Thus, the Court should not wait any longer. COVID-19 will not go away. In a *Nature* study of immunologists, infectious-disease researchers and virologists working on the coronavirus, 90 percent said the virus would never be eradicated. (Nicky Phillips, *The coronavirus is here to stay—here’s what that means* (Feb. 16, 2021) *Nature*, available at <https://www.nature.com/articles/d41586-021-00396-2>.) According to one prominent epidemiologist: “Eradicating this virus right now from the world is a lot like trying to plan the construction of a stepping-stone pathway to the Moon. It’s unrealistic.” (*Ibid.*; see also Jay Bhattacharya & Donald J. Boudreaux, *Eradication of Covid Is a Dangerous and Expensive Fantasy* (Aug. 4, 2021) *The Wall Street Journal*, available at <https://www.wsj.com/articles/zero-covid-coronavirus-pandemic-lockdowns-china-australia-new-zealand-11628101945> [noting that only infectious disease to be deliberately eradicated by man was smallpox and that “required a concerted global effort lasting decades and unprecedented cooperation among nations”].)

The Governor knows that. He did not issue the declaration of emergency to eliminate COVID-19 but to curb its spread so the health care system did not become overwhelmed. Exhibit B. The Governor said in his June 11 order that Californians fulfilled that goal. Exhibit E. He repeated that in his pleadings in the Ventura case. Exhibit H. Thus, the Governor has a duty to end the state of emergency and the Court should order him to fulfill it.

* * *

On June 6, 1966, Senator Robert F. Kennedy spoke to students and faculty at the University of Capetown. His words echo today:

Hand in hand with the freedom of speech goes the power to be heard—to share in the decisions of government which shape men's lives. Everything that makes man's lives worthwhile—family, work, education, a place to rear one's children and a place to rest one's head—all this depends on the decisions of government; all can be swept away by a government which does not heed the demands of its people, and I mean all of its people. Therefore, the essential humanity of man can be protected only where the government must answer—not just to the wealthy; not just to those a particular religion, not just to those of a particular race; but to all of the people.

(Robert F. Kennedy, Day of Affirmation Address (June 6, 1966) Capetown, South Africa, available at <https://www.jfklibrary.org>).

The state of emergency has deprived Californians of the right to participate in their own government. While this may have been necessary briefly, at the outset of a pandemic that caught the government off-guard, it cannot last forever. The Governor recognized that himself. Based on his own words and pleadings, it is time to end the state of emergency and return to normal governance.

VII. CONCLUSION

Therefore, Petitioners respectfully request that the Court grant the Petition and issue an order requiring the Governor to terminate the state of emergency he declared on March 4, 2020.

Dated: August 10, 2021

Respectfully Submitted,



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Document received by the CA Supreme Court.

CERTIFICATE OF WORD COUNT

I, the undersigned counsel for Petitioners, relying on the word count function of Microsoft Word, the computer program used to prepare this brief, certify that the above document contains 8,055 words.

Dated: August 10, 2021

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CERTIFICATE OF SERVICE

I am an employee in the County of Riverside. I am over the age of 18 years and not a party to the within entitled action; my business address is 25026 Las Brisas Road, Murrieta, California 92562.

On August 10, 2021, I served a copy of the following document(s) described as **VERIFIED PETITION FOR WRIT OF MANDATE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF MARI BARKE; DECLARATION OF MARY HOLLAND; AND DECLARATION OF ALIX MAYER** on the interested party(ies) in this action by-email or electronic service [C.C.P. Section 1010.6; CRC 2.250-2.261]. The documents listed above were transmitted via e-mail to the e-mail addresses on the attached service list.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am an employee in the office of a member of the bar of this Court who directed this service.



Susan Y. Kenney

SERVICE LIST

Governor Gavin Newsom 1303 10 th Street, Ste. 1173 Sacramento, CA 95814 (916) 445-2841 Email: ServiceofProcess@gov.ca.gov Todd.Grabarsky@doj.ca.gov	Respondent
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EXHIBIT A

Document received by the CA Supreme Court.

OFFICE OF PUBLIC AFFAIRS

Two Confirmed Cases of Novel Coronavirus in California

Date: January 26, 2020

Number: 20-001

Contact: Corey Egel | 916.440.7259 |
CDPHpress@cdph.ca.gov

SACRAMENTO – The California Department of Public Health (CDPH) has been informed that one individual in Los Angeles County and one individual in Orange County have tested positive for novel coronavirus 2019 (nCoV-2019). This information is confirmed by the Los Angeles County Department of Public Health (LADPH), the Orange County Health Care Agency (OCHCA), and the U. S. Centers for Disease Control and Prevention (CDC).

“The California Department of Public Health has been preparing for this situation by working closely with local health departments and health care providers,” said Dr. Sonia Angell, CDPH Director and State Health Officer. “We are supporting ongoing efforts by the Los Angeles County Department of Public Health and the Orange County Health Care Agency to respond to these cases, and will continue working with our partners to monitor for any additional cases that may occur in California, to ensure that persons can be safely and effectively evaluated for this novel virus, and to protect the health of the people of California.”

At this time, no other persons infected with nCoV-2019 have been identified in California. Currently, the immediate health risk from nCoV 2019 to the general public is low.

It is very important for persons who have recently traveled and who become ill to notify their health care provider of their travel history. Persons who have recently traveled to Wuhan, China, or who have had

contact with a person with possible novel coronavirus infection should contact their local health department or health care provider.

CDPH has been prepared and is continuing with the following actions:

- Providing information about the outbreak and how to report suspect cases to local health departments and health care providers in California.
- Coordinating with CDC personnel who are doing screening of travelers from Wuhan, China at SFO and LAX airports.
- Assuring that health care providers know how to safely manage persons with possible nCoV-2019 infection.
- Supporting hospitals and local public health laboratories for collection and shipment of specimens for testing at CDC for nCoV-2019.
- Activating CDPH's Emergency Operations Center to coordinate response efforts across the state.

The nCoV-2019 outbreak in China continues to evolve and California is prepared for more cases that may arise. CDPH considers this a very important public health event: we are closely monitoring the situation and providing updates to partners across the state to support their preparedness efforts.

As with any virus, especially during the flu season, CDPH reminds you there are a number of steps you can take to protect your health and those around you:

- Washing hands with soap and water.
- Avoiding touching eyes, nose or mouth with unwashed hands.
- Avoiding close contact with people who are sick are all ways to reduce the risk of infection with a number of different viruses.
- If someone does become sick with respiratory symptoms like fever and cough, they should stay away from work, school or other people to avoid spreading illness.

CDPH will not be providing additional information about the patients beyond what is being shared by the LADPH and OCHCA

For more information about nCov-2019, please visit the CDPH website.

Page Last Updated : March 4, 2020

Document received by the CA Supreme Court.

EXHIBIT B

Document received by the CA Supreme Court.

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

PROCLAMATION OF A STATE OF EMERGENCY

WHEREAS in December 2019, an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19), was first identified in Wuhan City, Hubei Province, China, and has spread outside of China, impacting more than 75 countries, including the United States; and

WHEREAS the State of California has been working in close collaboration with the national Centers for Disease Control and Prevention (CDC), with the United States Health and Human Services Agency, and with local health departments since December 2019 to monitor and plan for the potential spread of COVID-19 to the United States; and

WHEREAS on January 23, 2020, the CDC activated its Emergency Response System to provide ongoing support for the response to COVID-19 across the country; and

WHEREAS on January 24, 2020, the California Department of Public Health activated its Medical and Health Coordination Center and on March 2, 2020, the Office of Emergency Services activated the State Operations Center to support and guide state and local actions to preserve public health; and

WHEREAS the California Department of Public Health has been in regular communication with hospitals, clinics and other health providers and has provided guidance to health facilities and providers regarding COVID-19; and

WHEREAS as of March 4, 2020, across the globe, there are more than 94,000 confirmed cases of COVID-19, tragically resulting in more than 3,000 deaths worldwide; and

WHEREAS as of March 4, 2020, there are 129 confirmed cases of COVID-19 in the United States, including 53 in California, and more than 9,400 Californians across 49 counties are in home monitoring based on possible travel-based exposure to the virus, and officials expect the number of cases in California, the United States, and worldwide to increase; and

WHEREAS for more than a decade California has had a robust pandemic influenza plan, supported local governments in the development of local plans, and required that state and local plans be regularly updated and exercised; and

WHEREAS California has a strong federal, state and local public health and health care delivery system that has effectively responded to prior events including the H1N1 influenza virus in 2009, and most recently Ebola; and

WHEREAS experts anticipate that while a high percentage of individuals affected by COVID-19 will experience mild flu-like symptoms, some will have more serious symptoms and require hospitalization, particularly individuals who are elderly or already have underlying chronic health conditions; and

WHEREAS it is imperative to prepare for and respond to suspected or confirmed COVID-19 cases in California, to implement measures to mitigate the spread of COVID-19, and to prepare to respond to an increasing number of individuals requiring medical care and hospitalization; and

WHEREAS if COVID-19 spreads in California at a rate comparable to the rate of spread in other countries, the number of persons requiring medical care may exceed locally available resources, and controlling outbreaks minimizes the risk to the public, maintains the health and safety of the people of California, and limits the spread of infection in our communities and within the healthcare delivery system; and

WHEREAS personal protective equipment (PPE) is not necessary for use by the general population but appropriate PPE is one of the most effective ways to preserve and protect California's healthcare workforce at this critical time and to prevent the spread of COVID-19 broadly; and

WHEREAS state and local health departments must use all available preventative measures to combat the spread of COVID-19, which will require access to services, personnel, equipment, facilities, and other resources, potentially including resources beyond those currently available, to prepare for and respond to any potential cases and the spread of the virus; and

WHEREAS I find that conditions of Government Code section 8558(b), relating to the declaration of a State of Emergency, have been met; and

WHEREAS I find that the conditions caused by COVID-19 are likely to require the combined forces of a mutual aid region or regions to appropriately respond; and

WHEREAS under the provisions of Government Code section 8625(c), I find that local authority is inadequate to cope with the threat posed by COVID-19; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code section 8625, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in California.

IT IS HEREBY ORDERED THAT:

1. In preparing for and responding to COVID-19, all agencies of the state government use and employ state personnel, equipment, and facilities or perform any and all activities consistent with the direction of the Office of Emergency Services and the State Emergency Plan, as well as the California Department of Public Health and the Emergency Medical Services Authority. Also, all residents are to heed the advice of emergency officials with regard to this emergency in order to protect their safety.
2. As necessary to assist local governments and for the protection of public health, state agencies shall enter into contracts to arrange for the procurement of materials, goods, and services needed to assist in preparing for, containing, responding to, mitigating the effects of, and recovering from the spread of COVID-19. Applicable provisions of the Government Code and the Public Contract Code, including but not limited to travel, advertising, and competitive bidding requirements, are suspended to the extent necessary to address the effects of COVID-19.
3. Any out-of-state personnel, including, but not limited to, medical personnel, entering California to assist in preparing for, responding to, mitigating the effects of, and recovering from COVID-19 shall be permitted to provide services in the same manner as prescribed in Government Code section 179.5, with respect to licensing and certification. Permission for any such individual rendering service is subject to the approval of the Director of the Emergency Medical Services Authority for medical personnel and the Director of the Office of Emergency Services for non-medical personnel and shall be in effect for a period of time not to exceed the duration of this emergency.
4. The time limitation set forth in Penal Code section 396, subdivision (b), prohibiting price gouging in time of emergency is hereby waived as it relates to emergency supplies and medical supplies. These price gouging protections shall be in effect through September 4, 2020.
5. Any state-owned properties that the Office of Emergency Services determines are suitable for use to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services for this purpose, notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.
6. Any fairgrounds that the Office of Emergency Services determines are suitable to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services pursuant to the Emergency Services Act, Government Code section 8589. The Office of Emergency Services shall notify the fairgrounds of the intended use and can immediately use the fairgrounds without the fairground board of directors' approval, and

notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.

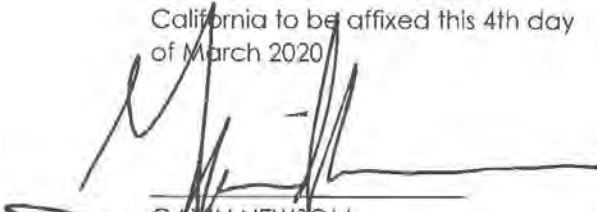
7. The 30-day time period in Health and Safety Code section 101080, within which a local governing authority must renew a local health emergency, is hereby waived for the duration of this statewide emergency. Any such local health emergency will remain in effect until each local governing authority terminates its respective local health emergency.
8. The 60-day time period in Government Code section 8630, within which local government authorities must renew a local emergency, is hereby waived for the duration of this statewide emergency. Any local emergency proclaimed will remain in effect until each local governing authority terminates its respective local emergency.
9. The Office of Emergency Services shall provide assistance to local governments that have demonstrated extraordinary or disproportionate impacts from COVID-19, if appropriate and necessary, under the authority of the California Disaster Assistance Act, Government Code section 8680 et seq., and California Code of Regulations, Title 19, section 2900 et seq.
10. To ensure hospitals and other health facilities are able to adequately treat patients legally isolated as a result of COVID-19, the Director of the California Department of Public Health may waive any of the licensing requirements of Chapter 2 of Division 2 of the Health and Safety Code and accompanying regulations with respect to any hospital or health facility identified in Health and Safety Code section 1250. Any waiver shall include alternative measures that, under the circumstances, will allow the facilities to treat legally isolated patients while protecting public health and safety. Any facilities being granted a waiver shall be established and operated in accordance with the facility's required disaster and mass casualty plan. Any waivers granted pursuant to this paragraph shall be posted on the Department's website.
11. To support consistent practices across California, state departments, in coordination with the Office of Emergency Services, shall provide updated and specific guidance relating to preventing and mitigating COVID-19 to schools, employers, employees, first responders and community care facilities by no later than March 10, 2020.
12. To promptly respond for the protection of public health, state entities are, notwithstanding any other state or local law, authorized to share relevant medical information, limited to the patient's underlying health conditions, age, current condition, date of exposure, and possible contact tracing, as necessary to address the effect of the COVID-19 outbreak with state, local, federal, and nongovernmental partners, with such information to be used for the limited purposes of monitoring, investigation and control, and treatment and coordination of care. The

notification requirement of Civil Code section 1798.24, subdivision (i), is suspended.

13. Notwithstanding Health and Safety Code sections 1797.52 and 1797.218, during the course of this emergency, any EMT-P licensees shall have the authority to transport patients to medical facilities other than acute care hospitals when approved by the California EMS Authority. In order to carry out this order, to the extent that the provisions of Health and Safety Code sections 1797.52 and 1797.218 may prohibit EMT-P licensees from transporting patients to facilities other than acute care hospitals, those statutes are hereby suspended until the termination of this State of Emergency.
14. The Department of Social Services may, to the extent the Department deems necessary to respond to the threat of COVID-19, waive any provisions of the Health and Safety Code or Welfare and Institutions Code, and accompanying regulations, interim licensing standards, or other written policies or procedures with respect to the use, licensing, or approval of facilities or homes within the Department's jurisdiction set forth in the California Community Care Facilities Act (Health and Safety Code section 1500 et seq.), the California Child Day Care Facilities Act (Health and Safety Code section 1596.70 et seq.), and the California Residential Care Facilities for the Elderly Act (Health and Safety Code section 1569 et seq.). Any waivers granted pursuant to this paragraph shall be posted on the Department's website.

I FURTHER DIRECT that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 4th day of March 2020



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

EXHIBIT C

Governor Newsom Declares State of Emergency to Help State Prepare for Broader Spread of COVID-19

Published: Mar 04, 2020

Emergency proclamation builds on work already underway across state government to protect public health and safety

Proclamation includes increased protections against price gouging, offers more assistance to local governments and allows health care workers to come from out of state

All levels of state government are being deployed to tackle this evolving situation

SACRAMENTO – As part of the state’s response to address the global COVID-19 outbreak, Governor Gavin Newsom today declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for broader spread of COVID-19. The proclamation comes as the number of positive California cases rises and following one official COVID-19 death.

Today’s proclamation builds on work already underway by the California Department of Public Health, California Health and Human Services Agency, Governor’s Office of Emergency Services and other agencies which have been on the front lines of the state’s response to COVID-19 since January.

“The State of California is deploying every level of government to help identify cases and slow the spread of this coronavirus,” said Governor Newsom. “This emergency proclamation will help the state further prepare our communities and our health care system in the event it spreads more broadly.”

The emergency proclamation includes provisions that protect consumers against price gouging, allow for health care workers to come from out of state to assist at health care facilities, and give health care facilities the flexibility to plan and adapt to accommodate incoming patients.

Yesterday, Governor Newsom announced the release of millions of [N95 masks](#) to address shortages caused by COVID-19. Today’s action also follows the announcement earlier this week that the state has secured the [capacity to test](#) thousands of specimens from the federal Centers for Disease Control and Prevention to expedite testing.

For the latest on the state’s COVID-19 preparedness and response, visit cph.ca.gov.

A copy of today’s emergency proclamation can be found [here](#).

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Document received by the CA Supreme Court.

EXHIBIT D

Document received by the CA Supreme Court.

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-33-20

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS in a short period of time, COVID-19 has rapidly spread throughout California, necessitating updated and more stringent guidance from federal, state, and local public health officials; and

WHEREAS for the preservation of public health and safety throughout the entire State of California, I find it necessary for all Californians to heed the State public health directives from the Department of Public Health.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8627, and 8665 do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

- 1) To preserve the public health and safety, and to ensure the healthcare delivery system is capable of serving all, and prioritizing those at the highest risk and vulnerability, all residents are directed to immediately heed the current State public health directives, which I ordered the Department of Public Health to develop for the current statewide status of COVID-19. Those directives are consistent with the March 19, 2020, Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, found at: <https://covid19.ca.gov/>. Those directives follow:

ORDER OF THE STATE PUBLIC HEALTH OFFICER
March 19, 2020

To protect public health, I as State Public Health Officer and Director of the California Department of Public Health order all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>. In addition, and in consultation with the Director of the Governor's Office of Emergency Services, I may designate additional sectors as critical in order to protect the health and well-being of all Californians.

Pursuant to the authority under the Health and Safety Code 120125, 120140, 131080, 120130(c), 120135, 120145, 120175 and 120150, this order is to go into effect immediately and shall stay in effect until further notice.

The federal government has identified 16 critical infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States that their incapacitation or

destruction would have a debilitating effect on security, economic security, public health or safety, or any combination thereof. I order that Californians working in these 16 critical infrastructure sectors may continue their work because of the importance of these sectors to Californians' health and well-being.

This Order is being issued to protect the public health of Californians. The California Department of Public Health looks to establish consistency across the state in order to ensure that we mitigate the impact of COVID-19. Our goal is simple, we want to bend the curve, and disrupt the spread of the virus.

The supply chain must continue, and Californians must have access to such necessities as food, prescriptions, and health care. When people need to leave their homes or places of residence, whether to obtain or perform the functions above, or to otherwise facilitate authorized necessary activities, they should at all times practice social distancing.

- 2) The healthcare delivery system shall prioritize services to serving those who are the sickest and shall prioritize resources, including personal protective equipment, for the providers providing direct care to them.
- 3) The Office of Emergency Services is directed to take necessary steps to ensure compliance with this Order.
- 4) This Order shall be enforceable pursuant to California law, including, but not limited to, Government Code section 8665.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 19th day of March 2020.



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

EXHIBIT E

Document received by the CA Supreme Court.

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-07-21

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS since March 2020, the State has taken decisive and meaningful actions to reduce the spread, and mitigate the impacts, of COVID-19, saving an untold number of lives, and to protect the ability of the State's health care system to deliver health care to all people in California who require it; and

WHEREAS the effective actions of Californians over the past fifteen months have successfully curbed the spread of COVID-19, resulting in dramatically lower disease prevalence and death, in the State; and

WHEREAS as of June 9, 2021, 54.3% of eligible Californians have received a full course of COVID-19 vaccination, raising the level of overall immunity in the State; and

WHEREAS the State continues to promote and facilitate vaccination of all eligible Californians; and

WHEREAS given the current outlook, it is appropriate to reevaluate existing public health directives to allow for a full reopening of California while maintaining caution and vigilance as California continues to increase vaccination rates and monitor COVID-19 variants; and

WHEREAS the California Department of Public Health and State Health Officer are empowered to issue mandatory public health directives to protect the public health in response to a contagious disease under existing State law, including, but not necessarily limited to, Health and Safety Code sections 120125, 120130(c), 120135, 120140, 120145, 120175, 120195 and 131080; and

WHEREAS to preserve the flexibility to modify public health directives and respond to changing conditions and to new and changing health guidance issued by the Centers for Disease Control, and under the provisions of Government Code section 8571, I find that strict compliance with the Administrative Procedure Act, Government Code section 11340 et seq., would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8571, and 8627, do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

- 1) Executive Order N-33-20, issued on March 19, 2020, setting forth the Stay-at-Home Order is hereby rescinded.
- 2) Executive Order N-60-20, issued on May 4, 2020, directing the State Public Health Officer to issue a risk-based framework for reopening the economy, and all restrictions on businesses and activities deriving from that framework, including all aspects of the Blueprint for a Safer Economy, is hereby rescinded.
- 3) Nothing related to the issuance of any Orders, guidance, or directives of the State Public Health Officer relating to COVID-19 shall be subject to the Administrative Procedure Act, Government Code section 11340 et seq.
- 4) Nothing in this Order shall be construed to limit the existing authority of local health officers to establish and implement public health measures within their respective jurisdictions that are more restrictive than, or that otherwise exist in addition to, the public health measures imposed on a statewide basis pursuant to the statewide directives of the State Public Health Officer.

IT IS FURTHER ORDERED that, as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 11th day of June 2021.



GAVIN NEWSOM
Governor of California

ATTEST:

SHIRLEY N. WEBER, PH.D.
Secretary of State

Document received by the CA Supreme Court.

EXHIBIT F

Document received by the CA Supreme Court.

As California Fully Reopens, Governor Newsom Announces Plans to Lift Pandemic Executive Orders

Published: Jun 11, 2021

Governor to lift Stay-at-Home Order and retire county tier system on June 15 as the state fully reopens

SACRAMENTO – Governor Gavin Newsom today took action to lift pandemic executive orders as the state moves [Beyond the Blueprint](#) next week to fully, safely reopen. That includes terminating the Stay-at-Home Order that was implemented early in the pandemic to protect Californians and retiring the Blueprint for a Safer Economy. Effective June 15, restrictions such as physical distancing, capacity limits and the county tier system will end.

The Governor is also continuing the wind down of executive actions put in place since March 2020 to help facilitate a coordinated response to the pandemic and ensure the state could quickly and efficiently respond to the impacts of the pandemic. A subset of provisions that facilitate the ongoing recovery – such as the provision allowing pharmacy technicians to administer vaccinations as the state continues to vaccinate millions of eligible Californians every week – will remain in place.

“California is turning the page on this pandemic, thanks to swift action by the state and the work of Californians who followed public health guidelines and got vaccinated to protect themselves and their communities,” said Governor Newsom. “With nearly 40 million vaccines administered and among the lowest case rates in the nation, we are lifting the orders that impact Californians on a day-to-day basis while remaining vigilant to protect public health and safety as the pandemic persists.”

The state’s decisive and early action through the Stay-at-Home Order directing Californians to limit their interactions with people from other households and the Blueprint criteria guiding the tightening and loosening of allowable activities based on the level of community transmission helped slow the spread of the virus, saving lives and protecting the state’s health care delivery system from being overwhelmed. With nearly 40 million vaccines administered and among the lowest case rates in the country, California is entering a new phase lifting these restrictions to fully reopen on June 15.

The Governor’s Office today established a timeline and process to continue winding down the various provisions of the 58 COVID-related executive orders, which suspended statutes and regulations to help the state and businesses continue operations during the pandemic. To ensure that impacted individuals and entities have time to prepare for the changes, the provisions will sunset in phases, beginning later this month, in July and in September. For example, the suspension of certain licensing requirements for manufacturers to produce hand sanitizer will end on June 30, as shortages are no longer a concern. By the end of September, nearly 90 percent of the executive actions taken since March 2020 will have been lifted.

Today the California Department of Public Health released a [new state public health officer order](#) that goes into effect on June 15. The order replaces the previous pandemic public health orders with limited requirements related to face coverings and mega events, as well as settings with children and youth pending an expected update later this month to the K-12 school guidance issued by the Centers for Disease Control and Prevention. The action supports the full and safe reopening of the state, while maintaining focused public health requirements that address the risk posed by variants as some regions across the nation and world continue to experience high levels of transmission.

A copy of the order terminating the Stay-at-Home Order and the Blueprint for a Safer Economy can be found [here](#). A copy of the order rolling back additional pandemic order provisions can be found [here](#).

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Document received by the CA Supreme Court.

EXHIBIT G

Document received by the CA Supreme Court.

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-08-21

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS since March 2020, the State has taken decisive and meaningful actions to reduce the spread, and mitigate the impacts, of COVID-19, saving an untold number of lives; and

WHEREAS as a result of the effective actions Californians have taken, as well as the successful and ongoing distribution of COVID-19 vaccines, California is turning a corner in its fight against COVID-19; and

WHEREAS on June 11, 2021, I issued Executive Order N-07-21, which formally rescinded the Stay-at-Home Order (Executive Order N-33-20, issued on March 19, 2020), as well as the framework for a gradual, risk-based reopening of the economy (Executive Order N-60-20, issued on May 4, 2020); and

WHEREAS in light of the current state of the COVID-19 pandemic in California, it is appropriate to roll back certain provisions of my COVID-19-related Executive Orders; and

WHEREAS certain provisions of my COVID-19 related Executive Orders currently remain necessary to continue to help California respond to, recover from, and mitigate the impacts of the COVID-19 pandemic, including California's ongoing vaccination programs, and the termination of certain provisions of my COVID-19 related Executive Orders during this stage of the emergency would compound the effects of the emergency and impede the State's recovery by disrupting important governmental and social functions; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this Order would continue to prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8571, and 8627, do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

The following provisions shall remain in place and shall have full force and effect through June 30, 2021, upon which time they will expire subject to individual conditions described in the enumerated paragraphs below.

- 1) State of Emergency Proclamation dated March 4, 2020:
 - a. Paragraph 10. Any facility operating under a waiver pursuant to this provision, memorialized in an All Facilities Letter, may operate pursuant to such a waiver through the stated expiration in the All Facilities Letter or September 30, 2021, whichever occurs first;
 - b. Paragraph 11;
 - c. Paragraph 12; and
 - d. Paragraph 13.

- 2) Executive Order N-25-20:
 - a. Paragraph 1; and
 - b. Paragraph 7, and as applicable to local governments per Executive Order N-35-20, Paragraph 3. Effective July 1, 2021, the waivers in Executive Order N-25-20, Paragraph 7, and Executive Order N-35-20, Paragraph 3, of reinstatement requirements set forth in Government Code sections 7522.56(f) and (g) are terminated.

- 3) Executive Order N-26-20:
 - a. Paragraph 1;
 - b. Paragraph 2;
 - c. Paragraph 3;
 - d. Paragraph 5;
 - e. Paragraph 6; and
 - f. Paragraph 7.

- 4) Executive Order N-27-20:
 - a. Paragraph 1;
 - b. Paragraph 2; and
 - c. Paragraph 3.

- 5) Executive Order N-28-20:
 - a. Paragraph 3; and
 - b. Paragraph 6.

- 6) Executive Order N-31-20:
 - a. Paragraph 1; and
 - b. Paragraph 2.

- 7) Executive Order N-35-20:
 - a. Paragraph 1. Any facility operating under a waiver pursuant to this provision, memorialized in an All Facilities Letter, may operate pursuant to such a waiver through the stated expiration in the All Facilities Letter or September 30, 2021, whichever occurs first;
 - b. Paragraph 4;
 - c. Paragraph 6. To the extent the Director exercised their authority pursuant to this provision on or before June 30, 2021, the extension shall remain valid until the effective expiration;

- d. Paragraph 10. The State Bar shall receive the time extension in the aforementioned order for any nomination submitted to the State Bar by the Governor on or before June 30, 2021; and
 - e. Paragraph 11 (as extended and clarified by N-71-20, Paragraph 6). Claims accruing before June 30, 2021 will remain subject to the 120-day extension granted in the aforementioned orders.
- 8) Executive Order N-36-20, Paragraph 1. To the extent the Secretary exercised their authority pursuant to this provision, the Secretary shall allow each facility to resume intake in a manner that clears intake backlog as soon as feasible.
- 9) Executive Order N-39-20:
- a. Paragraph 1. Any facility operating under a waiver pursuant to this provision, memorialized in an All Facilities Letter, may operate pursuant to such a waiver through the stated expiration in the All Facilities Letter or September 30, 2021, whichever occurs first;
 - b. Paragraph 4; and
 - c. Paragraph 7. The leases or agreements executed pursuant to this provision shall remain valid in accordance with the term of the agreement.
- 10) Executive Order N-40-20:
- a. Paragraph 1. For rulemakings published in the California Regulatory Notice Register pursuant to Government Code section 11346.4(a)(5) prior to June 30, 2021, the deadlines in the aforementioned order shall remain extended in accordance with the order;
 - b. Paragraph 2 (as extended and clarified by N-66-20, Paragraph 12, and N-71-20, Paragraph 10). Notwithstanding the expiration of this provision, state employees subject to these training requirements shall receive the benefit of the 120-day extension granted by the aforementioned orders. All required training due on or before June 30, 2021 must be completed within 120 days of the statutorily prescribed due date;
 - c. Paragraph 7 (as extended and clarified by N-66-20, Paragraph 13 and N-71-20, Paragraph 11). With regard to appeals received on or before June 30, 2021, the State Personnel Board shall be entitled to the extension in the aforementioned order to render its decision;
 - d. Paragraph 8. To the extent the deadlines specified in Government Code section 22844 and California Code of Regulations, title 2, sections 599.517 and 599.518 fell on a date on or before June 30, 2021 absent the extension, they shall expire pursuant to the timeframes specified in the aforementioned orders;
 - e. Paragraph 16;
 - f. Paragraph 17; and
 - g. Paragraph 20.
- 11) Executive Order N-45-20:
- a. Paragraph 4;
 - b. Paragraph 8;
 - c. Paragraph 9; and

- d. Paragraph 12. For vacancies occurring prior to June 30, 2021, the deadline to fill the vacancy shall remain extended for the time period in the aforementioned order.

12) Executive Order N-46-20:

- a. Paragraph 1; and
- b. Paragraph 2.

13) Executive Order N-47-20:

- a. Paragraph 2; and
- b. Paragraph 3.

14) Executive Order N-48-20, Paragraph 2 (which clarified the scope of N-34-20).

15) Executive Order N-49-20:

- a. Paragraph 1;
- b. Paragraph 3. For determinations made on or before June 30, 2021, the discharge date shall be within 14 days of the Board's determination; and
- c. Paragraph 4.

16) Executive Order N-50-20, Paragraph 2.

17) Executive Order N-52-20:

- a. Paragraph 6;
- b. Paragraph 7. To the extent an individual has commenced a training program prior to June 30, 2021, that was interrupted by COVID-19, that individual shall be entitled to the extended timeframe in the aforementioned order; and
- c. Paragraph 14; and
- d. Paragraph 16.

18) Executive Order N-53-20:

- a. Paragraph 3;
- b. Paragraph 12 (as extended or modified by N-69-20, Paragraph 10, and N-71-20, Paragraph 27); and
- c. Paragraph 13 (as extended or modified by N-69-20, Paragraph 11, and N-71-20, Paragraph 28).

19) Executive Order N-54-20, Paragraph 7. To the extent the date governing the expiration of registration of vehicles previously registered in a foreign jurisdiction falls on or before June 30, 2021, the deadline is extended pursuant to the aforementioned orders.

20) Executive Order N-55-20:

- a. Paragraph 1. Statutory deadlines related to cost reports, change in scope of service requests, and reconciliation requests occurring on

or before June 30, 2021 shall remain subject to the extended deadline in the aforementioned order;

- b. Paragraph 4;
- c. Paragraph 5;
- d. Paragraph 6;
- e. Paragraph 8;
- f. Paragraph 9;
- g. Paragraph 10;
- h. Paragraph 13;
- i. Paragraph 14. Statutory deadlines related to beneficiary risk assessments occurring on or before June 30, 2021 shall remain subject to the extended deadline in the aforementioned order; and
- j. Paragraph 16. Deadlines for fee-for-service providers to submit information required for a Medical Exemption Request extended on or before June 30, 2021 shall remain subject to the extended deadline granted under the aforementioned order.

21) Executive Order N-56-20:

- a. Paragraph 1;
- b. Paragraph 6;
- c. Paragraph 7;
- d. Paragraph 8;
- e. Paragraph 9; and
- f. Paragraph 11.

22) Executive Order N-59-20, Paragraph 6.

23) Executive Order N-61-20:

- a. Paragraph 1;
- b. Paragraph 2;
- c. Paragraph 3; and
- d. Paragraph 4.

24) Executive Order N-63-20:

- a. Paragraph 8(a) (as extended by N-71-20, Paragraph 40). The deadlines related to reports by the Division of Occupational Safety and Health (Cal/OSHA) and the Occupational Safety & Health Standards Board on proposed standards or variances due on or before June 30, 2021 shall remain subject to the extended timeframe;
- b. Paragraph 8(c). To the extent the date upon which the Administrative Director must act upon Medical Provider Network applications or requests for modifications or reapprovals falls on or before June 30, 2021 absent the extension in the aforementioned order, it shall remain subject to the extended timeframe;
- c. Paragraph 8(e). To the extent filing deadlines for a Return-to-Work Supplement appeal and any reply or responsive papers fall on or before June 30, 2021, absent the extension in the aforementioned order, they shall remain subject to the extended timeframe;
- d. Paragraph 9(a) (as extended and modified by N-71-20, Paragraph 39). Any deadline setting the time for the Labor Commissioner to

issue any citation under the Labor Code, including a civil wage and penalty assessment pursuant to Labor Code section 1741, that, absent the aforementioned order, would have occurred or would occur between May 7, 2020 and September 29, 2021 shall be extended to September 30, 2021. Any such deadline that, absent the aforementioned order, would occur after September 29, 2021 shall be effective based on the timeframe in existence before the aforementioned order;

- e. Paragraph 9(b) (as extended and modified by N-71-20, Paragraph 41);
- f. Paragraph 9(c) (as extended and modified by N-71-20, Paragraph 39). Any deadline setting the time for a worker to file complaints and initiate proceedings with the Labor Commissioner pursuant to Labor Code sections 98, 98.7, 1700.44, and 2673.1, that, absent the aforementioned order, would have occurred or would occur between May 7, 2020 and September 29, 2021 shall be extended to September 30, 2021. Any such deadline that, absent the aforementioned order, would occur after September 29, 2021 shall be effective based on the timeframe in existence before the aforementioned order;
- g. Paragraph 9(d) (as extended and modified by N-71-20, Paragraph 39). Any deadline setting the time for Cal/OSHA to issue citations pursuant to Labor Code section 6317, that, absent the aforementioned order, would have occurred or would occur between May 7, 2020 and September 29, 2021 shall be extended to September 30, 2021. Any such deadline that, absent the aforementioned order, would occur after September 29, 2021 shall be effective based on the timeframe in existence before the aforementioned order;
- h. Paragraph 9(e) (as extended and modified by N-71-20, Paragraph 41);
- i. Paragraph 10;
- j. Paragraph 12. Any peace officer reemployed on or before June 30, 2021 pursuant to the aforementioned order shall be entitled to the extended reemployment period set forth in the order;
- k. Paragraph 13;
- l. Paragraph 14; and
- m. Paragraph 15 (as extended by N-71-20, Paragraph 36).

25) Executive Order N-65-20:

- a. Paragraph 5 (as extended by N-71-20, Paragraph 35; N-80-20, Paragraph 4; and N-01-21). Identification cards issued under Health and Safety Code section 11362.71 that would otherwise have expired absent the aforementioned extension between March 4, 2020 and June 30, 2021 shall expire on December 31, 2021; and
- b. Paragraph 7.

26) Executive Order N-66-20:

- a. Paragraph 3;
- b. Paragraph 4; and
- c. Paragraph 5.

27) Executive Order N-68-20:

- a. Paragraph 1. Notwithstanding the expiration of the aforementioned order, temporary licenses granted on or before June 30, 2021 shall be valid through September 30, 2021; and
- b. Paragraph 2. Renewal fee payments otherwise due to the to the California Department of Public Health absent the extension in the aforementioned order on or before June 30, 2021, shall be entitled to the extensions of time set forth in the aforementioned order.

28) Executive Order N-71-20:

- a. Paragraph 1;
- b. Paragraph 4;
- c. Paragraph 16. Where the statutory deadline for opening or completing investigations is set to occur on or before June 30, 2021, the deadline shall remain subject to the extension in the aforementioned order; and
- d. Paragraph 17. Where the statutory deadline for serving a notice of adverse action is due on or before June 30, 2021, the deadline shall remain subject to the extension in the aforementioned order.

29) Executive Order N-75-20:

- a. Paragraph 7. Children placed in foster care on or before June 30, 2021 shall receive such examinations on or before July 31, 2021;
- b. Paragraph 8;
- c. Paragraph 9;
- d. Paragraph 10. Any facility operating under a waiver pursuant to this provision may operate pursuant to such a waiver through the expiration as set forth by the California Department of Public Health, or September 30, 2021, whichever occurs first; and
- e. Paragraph 13.

30) Executive Order N-76-20, Paragraph 3.

31) Executive Order N-77-20:

- a. Paragraph 1;
- b. Paragraph 2; and
- c. Paragraph 3.

32) Executive Order N-78-20 (as extended and modified by N-03-21):

- a. Paragraph 1; and
- b. Paragraph 2.

33) Executive Order N-83-20:

- a. Paragraph 3. To the extent the Director of the Department of Alcoholic Beverage Control suspends deadlines for renewing licenses upon payment of annual fees on or before June 30, 2021, the extension shall remain valid until the effective expiration;

- b. Paragraph 5 (which repealed and replaced N-71-20, Paragraph 19, which extended N-52-20, Paragraph 1, and N-69-20, Paragraph 3);
- c. Paragraph 6 (which repealed and replaced N-71-20, Paragraph 20, which extended N-52-20, Paragraph 2, and N-69-20, Paragraph 4); and
- d. Paragraph 7 (which repealed and replaced N-71-20, Paragraph 21, which extended N-52-20, Paragraph 3, and N-69-20, Paragraph 5).

34) Executive Order N-84-20:

- a. Paragraph 1;
- b. Paragraph 2;
- c. Paragraph 3; and
- d. Paragraph 5.

The following provisions shall remain in place and shall have full force and effect through July 31, 2021, upon which time they will expire subject to individual conditions described in the enumerated paragraphs below.

35) Executive Order N-39-20, Paragraph 8 (as extended by N-69-20, Paragraph 2 and N-71-20, Paragraph 8).

36) Executive Order N-53-20, Paragraph 11 (as extended or modified by N-68-20, Paragraph 15, and N-71-20, Paragraph 26).

37) Executive Order N-71-20, Paragraph 25.

38) Executive Order N-75-20:

- a. Paragraph 5; and
- b. Paragraph 6

The following provisions shall remain in place and shall have full force and effect through September 30, 2021, upon which time they will expire subject to individual conditions described in the enumerated paragraphs below.

39) State of Emergency Proclamation dated March 4, 2020:

- a. Paragraph 3; and
- b. Paragraph 14. Any facility operating under a waiver pursuant to this provision may operate pursuant to such a waiver through the expiration as set forth by the Department of Social Services, or September 30, 2021, whichever occurs first.

40) Executive Order N-25-20:

- a. Paragraph 2;
- b. Paragraph 3; and
- c. Paragraph 4.

41) Executive Order N-28-20:

- a. Paragraph 4; and
- b. Paragraph 5.

42) Executive Order N-29-20, Paragraph 3, is withdrawn and replaced by the following text:

Notwithstanding any other provision of state or local law (including, but not limited to, the Bagley-Keene Act or the Brown Act), and subject to the notice and accessibility requirements set forth below, a local legislative body or state body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body or state body. All requirements in both the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of members, the clerk or other personnel of the body, or of the public as a condition of participation in or quorum for a public meeting are hereby waived.

In particular, any otherwise-applicable requirements that

- (i) state and local bodies notice each teleconference location from which a member will be participating in a public meeting;
- (ii) each teleconference location be accessible to the public;
- (iii) members of the public may address the body at each teleconference conference location;
- (iv) state and local bodies post agendas at all teleconference locations;
- (v) at least one member of the state body be physically present at the location specified in the notice of the meeting; and
- (vi) during teleconference meetings, a least a quorum of the members of the local body participate from locations within the boundaries of the territory over which the local body exercises jurisdiction

are hereby suspended.

A local legislative body or state body that holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements set forth below, shall have satisfied any requirement that the body allow members of the public to attend the meeting and offer public comment. Such a body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

Accessibility Requirements: If a local legislative body or state body holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the body shall also:

- (i) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the Americans with Disabilities Act and resolving any doubt whatsoever in favor of accessibility; and
- (ii) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to subparagraph (ii) of the Notice Requirements below.

Notice Requirements: Except to the extent this Order expressly provides otherwise, each local legislative body and state body shall:

- (i) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by the Bagley-Keene Act or the Brown Act, and using the means otherwise prescribed by the Bagley-Keene Act or the Brown Act, as applicable; and
- (ii) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in such means of public observation and comment, or any instance prior to the issuance of this Order in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of such means, a body may satisfy this requirement by advertising such means using "the most rapid means of communication available at the time" within the meaning of Government Code, section 54954, subdivision (e); this shall include, but need not be limited to, posting such means on the body's Internet website.

All of the foregoing provisions concerning the conduct of public meetings shall apply through September 30, 2021.

43) Executive Order N-32-20:

- a. Paragraph 1;
- b. Paragraph 2; and
- c. Paragraph 3.

44) Executive Order N-35-20:

- a. Paragraph 2; and
- b. Paragraph 12.

45) Executive Order N-39-20:

- a. Paragraph 2;
- b. Paragraph 3; and
- c. Paragraph 6.

46) Executive Order N-40-20:

- a. Paragraph 12 (as extended or modified by N-66-20, paragraph 16, N-71-20, paragraph 14, and N-75-20, Paragraph 12). To the extent the Director exercised their authority pursuant to this provision on or before September 30, 2021, the extension shall remain valid until the effective expiration of the applicable waiver; and
- b. Paragraph 18.

47) Executive Order N-42-20.

48) Executive Order N-43-20.

49) Executive Order N-49-20, Paragraph 2.

50) Executive Order N-54-20:

- a. Paragraph 8 (as extended by N-80-20, Paragraph 6); and
- b. Paragraph 9. To the extent any timeframe within which a California Native American tribe must request consultation and the lead agency must begin the consultation process relating to an Environmental Impact Report, Negative Declaration, or Mitigated Negative Declaration under the California Environmental Quality Act extends beyond September 30, 2021, the tribe and lead agency will receive the benefit of the extension so long as the triggering event occurred on or before September 30, 2021.

51) Executive Order N-55-20:

- a. Paragraph 2;
- b. Paragraph 3;
- c. Paragraph 7. All on-site licensing visits which would have been due on or before September 30, 2021 shall occur before December 31, 2021;
- d. Paragraph 11; and
- e. Paragraph 12.

52) Executive Order N-56-20, Paragraph 10 is withdrawn and superseded by the following text:

Paragraph 42 of this Order, including the conditions specified therein, shall apply to meetings held pursuant to Article 3 of Chapter 2 of Part 21 of Division 3 of Title 2 of the Education Code and Education Code section 47604.1(b).

53) Executive Order N-58-20 (as extended by N-71-20, Paragraph 29).

54) Executive Order N-59-20:

- a. Paragraph 1. The sworn statement or verbal attestation of pregnancy must be submitted on or before September 30, 2021 and medical verification of pregnancy must be submitted within 30

working days following submittal of the sworn statement or verbal attestation for benefits to continue;

- b. Paragraph 2 (as extended and modified by N-69-20, Paragraph 14, and N-71-20, Paragraph 31);
- c. Paragraph 3 (as extended and modified by N-69-20, Paragraph 15, and N-71-20, Paragraph 32); and
- d. Paragraph 4 (as extended and modified by N-69-20, Paragraph 16, and N-71-20, Paragraph 33).

55) Executive Order N-63-20:

- a. Paragraph 8(b). To the extent filing deadlines for claims and liens fall on or before September 30, 2021, absent the extension in the aforementioned order, they shall remain subject to the extended timeframe; and
- b. Paragraph 11.

56) Executive Order N-66-20, Paragraph 6.

57) Executive Order N-71-20:

- a. Paragraph 15;
- b. Paragraph 22; and
- c. Paragraph 23.

58) Executive Order N-75-20:

- a. Paragraph 1;
- b. Paragraph 2; and
- c. Paragraph 4.

59) Executive Order N-80-20:

- a. Paragraph 3; and
- b. Paragraph 7.

60) Executive Order N-83-20

- a. Paragraph 2 is withdrawn and replaced by the following text:

The deadline to pay annual fees, including any installment payments, currently due or that will become due during the proclaimed emergency, as specified in Business and Professions Code sections 19942, 19951, 19954, 19955, 19984, and any accompanying regulations is September 30, 2021; the deadlines for submission of any application or deposit fee, as specified in Business and Professions Code sections 19951 (a), 19867, 19868, 19876, 19877, 19942, 19984, and any accompanying regulations is no later than September 30, 2021, or per existing requirements, whichever date is later.

- b. Paragraph 4.

61) Executive Order N-03-21, Paragraph 3, is withdrawn and replaced by the following text:

As applied to commercial evictions only, the timeframe for the protections set forth in Paragraph 2 of Executive Order N-28-20 (and extended by Paragraph 21 of Executive Order N-66-20, Paragraph 3 of Executive Order N-71-20, and Paragraph 2 of Executive Order N-80-20) is extended through September 30, 2021.

IT IS FURTHER ORDERED that, as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 11th day of June 2021.



GAVIN NEWSOM
Governor of California

ATTEST:

SHIRLEY N. WEBER, PH.D.
Secretary of State

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EXHIBIT H

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*Exempt from Filing Fees -
Gov. Code, § 6103*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF VENTURA

13 **COUNTY OF VENTURA and ROBERT**
LEVIN, M.D., in his capacity as Health
14 **Officer for Ventura County,**
15
16 **v.**
17 **GODSPEAK CALVARY CHAPEL, ROB**
McCOY and DOES 1 through 1000,
18 **inclusive,**
19 **Defendants.**
20 **GODSPEAK CALVARY CHAPEL, ROB**
McCOY,
21 **Cross-Complainants,**
22 **v.**
23 **COUNTY OF VENTURA; ROBERT LEVIN,**
M.D., in his capacity as Health Officer for
24 **Ventura County; GAVIN NEWSOM, in his**
official capacity as the Governor of California;
25 **ERICA PAN, M.D., in her official capacity as**
Acting California Public Health Officer; and
26 **DOES 1 through 20, inclusive,**
27 **Cross-Defendants.**
28

Case No. 56-2020-00544086-CU-MC-VTA

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF STATE
CROSS-DEFENDANTS' DEMURRER
TO SECOND AMENDED
CROSS-COMPLAINT**

Date: August 6, 2021
Time: 8:30 a.m.
Dept: 42
Judge: Hon. Henry J. Walsh
Trial Date: N/A
Action Filed: August 5, 2020

RESERVATION ID: 2575326

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25
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27
28

TABLE OF CONTENTS

	Page
Introduction	7
Facts and Procedural Background	8
I. The COVID-19 Pandemic and the State’s Tailored Response	8
II. The Relaxation and Lifting of the State’s Pandemic Restrictions (January 2021 to Present)	10
III. This Action	14
Legal Standard	15
Argument	16
I. Godspeak’s Cross-Complaint Is Moot Because the Challenged Restrictions Have Been Rescinded and Cannot Be Reimposed	16
II. Godspeak’s Prayer for Damages Does Not Create a Live Controversy Because the State Cross-Defendants Are Immune as a Matter of Law	20
Conclusion	22

Document received by the CA Supreme Court.

TABLE OF AUTHORITIES

		<u>Page</u>
1		
2		
3		
4	CASES	
5	<i>Alden v. Maine</i>	
6	(1999) 527 U.S. 706	20
7	<i>Ass'n of Irrigated Residents v. Dep't of Conservation</i>	
8	(2017) 11 Cal.App.5th 1202	17
9	<i>Blank v. Kirwan</i>	
10	(1985) 39 Cal.3d 311	15, 16
11	<i>Building a Better Redondo, Inc. v. City of Redondo Beach</i>	
12	(2012) 203 Cal.App.4th 852	19
13	<i>Building Permit Consultants, Inc. v. Mazur</i>	
14	(2004) 122 Cal.App.4th 1400	16
15	<i>Burfitt v. Newsom</i>	
16	Super. Ct. Kern County June 14, 2021, No. BCV-20-102267	7, 12
17	<i>Calvary Chapel of Ukiah v. Newsom</i>	
18	(E.D. Cal. Mar. 10, 2021), No. 2:20-cv-01431-KJM-DMC, __ F.Supp.3d __, 2021 WL 916213	11
19	<i>City of San Jose v. Superior Court</i>	
20	(1974) 12 Cal.3d 447	21
21	<i>County of L.A. v. Superior Court</i>	
22	(2009) 181 Cal.App.4th 218	21
23	<i>Cross Culture Christian Ctr. v. Newsom</i>	
24	(E.D. Cal. May 5, 2020) 445 F. Supp.3d 758, 772	11
25	<i>Daily Journal Corp. v. County of L.A.</i>	
26	(2009) 172 Cal.App.4th 1550	17
27	<i>Delta Stewardship Council Cases</i> (2020) 48 Cal.App.5th 1014, 1053	17
28	<i>Fontana v. Cantrell, et al.</i>	
	(E.D. La. June 17, 2021) No. CV 21-326, 2021 WL 2514682	18
	<i>Forbes v. County of San Diego et al.</i>	
	(S.D. Cal. March 4, 2021), No. 20-cv-00998-BAS-JLB, 2021 WL 843175	16

TABLE OF AUTHORITIES
(continued)

		<u>Page</u>
1		
2		
3	<i>Hafer v. Melo</i>	
4	(1991) 502 U.S. 21	21
5	<i>Harvest Rock Church, Inc. v. Newsom</i>	
6	(9th Cir. 2021) 985 F.3d 771	11
7	<i>Harvest Rock Church v. Newsom</i>	
8	(2021) 141 S. Ct. 1289	11
9	<i>Harvest Rock Church v. Newsom</i>	
10	(C.D. Cal. Dec. 12, 2020) No. 2:20-6414-JGB (KKx), 2020 WL 7639584	10
11	<i>Harvest Rock Church v. Newsom</i>	
12	(C.D. Cal. May 14, 2021) No. 2:20-cv-06414JGB(KKx).....	7, 12
13	<i>Herndon v. Little</i>	
14	(D. Idaho Jan. 7, 2021) No. 1:20-cv-00205-DCN, 2021 WL 66657	18
15	<i>Javor v. Taggart</i>	
16	(2002) 98 Cal.App. 4th 795	21
17	<i>Katzberg v. Regents of University of California</i>	
18	(2002) 29 Cal.4th 300	21
19	<i>Nat'l Ass'n of Wine Bottlers v. Paul</i>	
20	(1969) 268 Cal.App.2d 741	17, 19
21	<i>Ovando v. County of L.A.</i>	
22	(2008) 159 Cal.App.4th 42	21
23	<i>Paul v. Milk Depots, Inc.</i>	
24	(1964) 62 Cal.2d 129	17, 18
25	<i>People ex rel. Becerra v. Superior Court (Ahn)</i>	
26	(2018) 29 Cal.App.5th 486	17
27	<i>People ex rel. Grijalva v. Superior Court</i>	
28	(2008) 159 Cal.App.4th 1072	21
	<i>People v. Dunley</i>	
	(2016) 247 Cal.App. 4th 1438 (2016).....	20
	<i>Rakestraw v. Cal. Physicians' Service</i>	
	(2000) 81 Cal.App.4th 39	15

TABLE OF AUTHORITIES
(continued)

		<u>Page</u>
1		
2		
3	<i>Ramsek v. Beshear</i>	
4	(6th Cir. 2021) 989 F.3d 494.....	18
5	<i>Roger v. Cty. of Riverside</i>	
6	(2020) 44 Cal.App.5th 510	17
7	<i>Sea-Land Services, Inc. v. ILWU</i>	
8	(9th Cir. 1991) 939 F.2d 866.....	20
9	<i>South Bay United Pentecostal Church v. Newsom</i>	
10	(2021) 141 S. Ct. 716	11
11	<i>South Bay United Pentecostal Church v. Newsom</i>	
12	(9th Cir. 2021) 985 F.3d 1128.....	9, 11
13	<i>South Bay United Pentecostal Church v. Newsom</i>	
14	(S.D. Cal. Dec. 21, 2020) No. 20-CV-00865-BAS-AHG, __ F.Supp.3d __	10, 12
15	<i>South Bay United Pentecostal Church v. Newsom</i>	
16	(S.D. Cal. March 29, 2021) No. 3:20-cv-865-BAS-AHG, 2021 WL ____	11
17	<i>South Bay United Pentecostal Church v. Newsom</i>	
18	(S.D. Cal. June 1, 2021) No. 3:20-cv-865-BAS-AHG.....	7, 11, 12
19	<i>Sturgell v. Department of Fish & Wildlife</i>	
20	(2019) 43 Cal.App.5th 35	18
21	<i>Tandon v. Newsom</i>	
22	(2021) 141 S. Ct.	12
23	<i>Teal v. Superior Court</i>	
24	(2014) 60 Cal.4th 595	17
25	<i>Will v. Michigan Department of State Police</i>	
26	(1989) 491 U.S. 58.....	21
27	<i>Wilson & Wilson v. City Council of Redwood City</i>	
28	(2011) 191 Cal.App.4th 1559	17, 19
	<i>Young v. Becerra</i>	
	(N.D. Cal. Apr. 7, 2021), No. 3:20-cv-05628-JD, 2021 WL 1299069	16
	<i>Younger v. Super. Ct.</i>	
	(1978) 21 Cal.3d 102	17

Document received by the CA Supreme Court.

1
2
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5
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TABLE OF AUTHORITIES
(continued)

Page

STATUTES

United States Code, Title 42

§ 1983..... 21

Code of Civil Procedure

§ 430.10, subd. (a)..... 15

Government Code

§ 815..... 21

§ 818.2..... 21

§ 820.2..... 21

§ 821..... 21

§ 911.2..... 21

§ 945.4..... 21

§ 945.6..... 21

Health and Safety Code

§ 27..... 9

§ 120125..... 9

§ 120130, subd. (c)..... 9

§ 120130, subd. (d)..... 9

§ 120140..... 9

1 INTRODUCTION

2 Over the past 16 months, California public health officials have sought to combat the worst
3 public health crisis in at least a century while allowing normal activities to continue to the
4 maximum extent possible without jeopardizing public health and safety. With the widespread
5 distribution of vaccines and low case and hospitalization rates, the State is now returning to
6 normalcy. In April 2021, the rules challenged in this case—which previously imposed capacity
7 limits on indoor worship services in order to reduce community spread of the virus—were made
8 voluntary. In May 2021, the State entered into stipulated permanent injunctions that prohibit it
9 from re-imposing the challenged restrictions on houses of worship.¹ And, as of June 15, 2021,
10 the State rescinded the entire Blueprint for a Safer Economy, including the restrictions challenged
11 in the cross-complaint.

12 Though not subject to any mandatory restrictions on their indoor worship services since
13 April, Cross-Complainants Godspeak Calvary Church and its pastor (collectively “Godspeak”)
14 continue to challenge the constitutionality of the rescinded restrictions. In Godspeak’s now-
15 obsolete cross-complaint, originally filed in September 2020,² it alleges these restrictions violate
16 myriad provisions of the U.S. and California Constitutions, and requests an injunction barring the
17 State from enforcing the restrictions “in any manner as to infringe [on its] constitutional and
18 statutory rights.” (Second Amended Cross-Complaint (“SAC”), Prayer for Relief, ¶¶ A, B.)
19 Godspeak also seeks a declaratory judgment “declaring that the Orders are unconstitutional,” as
20 well as nominal and compensatory damages. (*Id.*, ¶ C.) Missing from Godspeak’s case,
21 however, are any allegations of *ongoing*, actual injury for which the Court could provide any
22

23 ¹ See *Burfitt v. Newsom* (Super. Ct. Kern County, 2021. No. BCV-20-102267) (stipulated
24 statewide permanent injunction); *Harvest Rock Church v. Newsom* (C.D. Cal. May 14, 2021)
25 Case No. 2:20-cv-06414JGB(KKx) (same); *South Bay United Pentecostal Church v. Newsom*
26 (S.D. Cal. June 1, 2021) Case No. 3:20-cv-865-BAS-AIIG (same). The injunctions are included
27 as Exhibits A, B, and C, respectively, to the State’s Request for Judicial Notice (“RJN”), filed
28 herewith. Each of the three injunctions also precludes the State from reimposing the former
restrictions on singing or chanting in houses of worship. (*Ibid.*)

² Godspeak filed the initial cross-complaint on September 8, 2020, a First Amended
Cross-Complaint (adding claims under the U.S. Constitution) on February 1, 2020, and a Second
Amended Cross-Complaint on May 20, 2021; all three focus on the alleged unconstitutionality of
the State’s former capacity restrictions on indoor worship services.

1 effective relief. Thus, there is no reason for this Court to weigh in on Godspeak’s constitutional
2 claims; they are moot, and the issues presented are not likely to recur.

3 Godspeak’s prayer for retrospective relief, i.e., damages, is likewise a nonstarter, as it is
4 plainly barred by sovereign and statutory immunities. The Governor and the Public Health
5 Officer, who are sued in their official capacities, cannot be held liable for damages as a matter of
6 law, whether Godspeak pursues relief under federal or state law. Given the absence of any viable
7 request for relief, Godspeak’s cross-complaint against the State Cross-Defendants should be
8 dismissed without leave to amend.

9 Because Godspeak’s claims for injunctive and declaratory relief are moot, and no damages
10 may be recovered against the State Cross-Defendants as a matter of law, the Court should sustain
11 this demurrer in its entirety and dismiss the SAC without leave to amend.

12 **FACTS AND PROCEDURAL BACKGROUND**

13 **I. THE COVID-19 PANDEMIC AND THE STATE’S TAILORED RESPONSE**

14 State authorities have taken a variety of measures throughout the COVID-19 pandemic to
15 curb the spread of COVID-19 and protect public health and lives. The State’s approach has
16 evolved over time based on scientific understanding of the virus and its modes of transmission, as
17 case counts have surged and receded, and as the public health tools available to the State have
18 changed. Now that vaccines are widely available and a significant percentage of the population is
19 fully or partially vaccinated, and case counts are at their lowest since the pandemic began, the
20 State has rescinded nearly all non-pharmaceutical restrictions, like capacity limits on indoor
21 activities. (See *infra*, p. 9.) At all times, the State has based its restrictions on neutral, objective,
22 risk-based criteria pegged to the way the disease spreads from person to person.

23 Governor Gavin Newsom first proclaimed a State of Emergency on March 4, 2020. (RJN,
24 Exh. D.) On March 19, 2020, as the crisis deepened, the Governor issued a “Stay-at-Home”
25 Order (Executive Order N-33-20) limiting non-essential gatherings and travel and directing
26 Californians to heed directives of the Public Health Officer. (RJN, Exh. E.) The Public Health
27 Officer separately issued a corresponding Order directing individuals to stay home except as
28 needed to maintain continuity of operations of identified critical infrastructure. (RJN, Exh. F.)

1 Houses of worship, like most businesses and other activities, were temporarily required to
2 suspend indoor operations. On May 4, 2020, the Governor issued an order (Executive Order N-
3 60-20) authorizing the Public Health Officer to establish criteria for reopening various sectors and
4 activities depending on extent of community spread in each county. (RJN, Exh. G.) In August
5 2020, the Public Health Officer issued the “Blueprint for A Safer Economy” (“Blueprint”). (See
6 RJN, Exhs. H, I.) Informed by developing scientific knowledge about COVID-19 transmission
7 risk, the Blueprint imposed restrictions upon particular sectors or activities based on their
8 comparative risk to public health.³ (*Id.*) The Blueprint’s restrictions were based on neutral,
9 evidence-based criteria, such as where the activity takes place (in particular, indoors or outdoors),
10 the number and proximity of people involved, whether the activity involves singing, chanting, or
11 other acute risk factors, the activity’s duration, and the ability to employ protective measures such
12 as masks, physical distancing, and ventilation. (*Id.*; see *South Bay United Pentecostal Church v.*
13 *Newsom* (9th Cir. 2021) 985 F.3d 1128, 1134 [noting that the Blueprint imposes “greater
14 restrictions on . . . indoor congregate activities,” based on the “widely shared consensus in the
15 scientific community that this activity presents ‘an especially risky type of public gathering’”].))
16 The stringency of restrictions varied depending upon the level of community spread in each
17 county; counties were assigned to one of four color-coded tiers, ranging from Tier 1
18 (“Widespread” - Purple) to Tier 4 (“Minimal” - Yellow), based largely on their adjusted case and
19 positive-test rates. (RJN, Exhs. H, I.) As conditions improved in each county, the county moved
20 into a less restrictive tier. (*Id.*)

21 Under the Blueprint, houses of worship were permitted to hold services of any size
22 outdoors, subject to physical distancing and mask-wearing requirements. Indoor services were

23
24 ³ California law grants the California Department of Public Health (CDPH) broad
25 authority to take steps needed to prevent and control the spread of communicable diseases. The
26 Communicable Disease Prevention and Control Act provides that CDPH “shall examine into the
27 causes of communicable disease . . . occurring or likely to occur in this state” (Health & Saf.
28 Code, §§ 27, 120125), and it authorizes CDPH to “take measures as are necessary to ascertain the
nature of the disease and prevent its spread.” (*Id.*, § 120140; *id.*, §§ 27, 120130, subs. (c)-(d);
120135 [CDPH may establish “places of quarantine or isolation”], 120145 [CDPH may
“quarantine, isolate, . . . houses, rooms, other property, places, cities, or localities . . . whenever in
its judgment the action is necessary to protect or preserve the public health”].) The Blueprint was
issued pursuant to these grants of statutory authority. (RJN, Exh. I.)

1 subject to capacity restrictions that varied by tier. In Tier 1 counties, indoor worship services were
2 temporarily prohibited; in Tiers 2-4, houses of worship could operate indoors at 25% capacity (or
3 100 persons), 50% capacity (or 200 persons), and 50% percent capacity, respectively. (See RJN,
4 Exhs. H, I.)

5 As COVID-19 cases and deaths spiked to alarming levels in the winter of 2020, state
6 authorities imposed a “Regional Stay at Home Order” temporarily overriding the Blueprint’s
7 restrictions in multi-county regions in which available capacity for Intensive Care Unit beds
8 dropped below 15 percent. (RJN, Exh. J.) By late January 2021, COVID-19 case, hospitalization,
9 and death rates had improved, allowing state health officials to lift the Regional Stay at Home
10 Order, and reinstating the Blueprint as the operative framework.⁴ (RJN, Exh. K.) With the
11 approval and initial rollout of vaccines in early 2021, and as conditions improved, the State
12 relaxed the case-count criteria for counties to move into a less restrictive tier. (See RJN, Exh. L.)

13 **II. THE RELAXATION AND LIFTING OF THE STATE’S PANDEMIC RESTRICTIONS**
14 **(JANUARY 2021 TO PRESENT)**

15 While the vast majority of the tens of thousands of houses of worship throughout California
16 accepted the State’s restrictions as a necessary means to combat the pandemic, a handful of
17 churches brought suit to challenge them. Federal courts repeatedly refused to enjoin the State’s
18 restrictions. (*South Bay United Pentecostal Church v. Newsom* (S.D. Cal. Dec. 21, 2020) No. 20-
19 CV-00865-BAS-AHG, __ F.Supp.3d __, 2020 WL 7488974, at **1-5; *Harvest Rock Church v.*
20 *Newsom* (C.D. Cal. Dec. 12, 2020) No. EDCV 20-6414 JGB (KKx), 2020 WL 7639584, at *1,
21 *11.) On January 22, 2021, however, the Ninth Circuit Court of Appeals held that the Blueprint’s
22 100- and 200-person attendance caps in Tiers 2 and 3 were likely unconstitutional, while

23 ⁴ The County of Ventura was assigned to Tier 1 of the Blueprint based on its level of
24 community spread on August 28, 2020, when the Blueprint went into effect. It moved to the less
25 restrictive Tier 2 on October 6, 2020, and was reassigned to Tier 1, along with forty other counties,
26 due to increased community transmission, on November 16, 2020. (See Coronavirus Latest News &
27 Updates – Ventura County Recovers, [https://www.venturacountyrecovers.org/coronavirus-latest-](https://www.venturacountyrecovers.org/coronavirus-latest-news-updates/)
28 [news-updates/](https://www.venturacountyrecovers.org/coronavirus-latest-news-updates/).) The County was subject to the Regional Stay at Home Order for the Southern
California region when that Order issued on December 5, 2020. When that Order was lifted on
January 25, 2021, the County was again assigned to Tier 1, until it was reassigned to Tier 2 on March
17, 2021, based on decreased community transmission, then moved to the still less restrictive Tier 3
on April 7, 2021. On June 2, 2021, the County was reassigned to the least restrictive Tier 4, and it was
subject to that assignment until the Blueprint regime was lifted in its entirety on June 15, 2021. (*Id.*)

1 upholding the Blueprint’s temporary ban on indoor services in Tier 1 and other restrictions.
2 including those on singing and other similar vocalizations. (*South Bay United Pentecostal*
3 *Church v. Newsom, supra*, 985 F.3d at pp. 1151-1152; *see also Harvest Rock Church, Inc. v.*
4 *Newsom* (9th Cir. 2021) 985 F.3d 771, 771 [following *South Bay*].) Two weeks later, on
5 February 5, the U.S. Supreme Court temporarily enjoined the *prohibition* on indoor worship
6 services in Tier 1. (*South Bay United Pentecostal Church v. Newsom* (2021) 141 S.Ct. 716; *see*
7 *also Harvest Rock Church v. Newsom* (2021) 141 S. Ct. 1289.) The Supreme Court declined,
8 however, to enjoin the *percentage capacity limits* on indoor worship services, including a 25%
9 limit in Tier 1, or the prohibition on singing and chanting during indoor services. (*South Bay*
10 *United Pentecostal Church*, 141 S. Ct. at p. 716.)

11 In response to these decisions, the State revised its restrictions on indoor worship services,
12 permitting indoor services to take place in all tiers, subject to capacity limits. Specifically, the
13 State set a 25% capacity limit in Tier 1, the same as that already imposed in Tier 2. The State
14 also relaxed the Blueprint’s restrictions on singing and chanting indoors.⁵ (*Id.*) Outdoor services
15 continued to be permitted statewide with no attendance limit or restrictions on singing. (*Id.*) At
16 least two federal district courts denied requests to enjoin those revised restrictions. (*Cross*
17 *Culture Christian Ctr. v. Newsom* (E.D. Cal. May 5, 2020) 445 F. Supp.3d 758, 772; *Calvary*
18 *Chapel of Ukiah v. Newsom* (E.D. Cal. Mar. 10, 2021, No. 2:20-cv-01431-KJM-DMC) ___ F.
19 Supp.3d ___, 2021 WL 916213; *see also South Bay United Pentecostal Church v. Newsom* (S.D.
20 Cal. Mar. 29, 2021) No. 3:20-cv-00865-BAS-AHG, 2021 WL ___ [denying Plaintiffs’ request for
21 injunctive relief pending evidentiary hearing]; *In re South Bay United Pentecostal Church* (9th
22 Cir. April 2, 2021) 992 F.3d 945, 949-950 [denying Plaintiffs’ petition for Writ of Mandamus and
23 upholding denial of injunctive relief pending evidentiary hearing].)

24 On April 12, as conditions continued to improve, and following the U.S. Supreme Court’s
25 decision concerning in-home worship services in *Tandon v. Newsom* (April 9, 2021) 141 S.Ct.
26 1294, the State issued guidance lifting all remaining capacity restrictions on indoor worship

27 ⁵ The revised singing and chanting restrictions permitted performers to engage in singing
28 and similar vocalizations during indoor services before a live congregation, and permitted houses
of worship to host recording sessions for performers. (*Id.*)

1 services. And, on April 23, the State removed the remaining restrictions on singing or chanting
2 during indoor activities, making all such restrictions “recommended only.” Thus, for several
3 months, Godspeak (and all other houses of worship in California) have been able to conduct
4 indoor religious worship services with no attendance limits, and no limits on congregational
5 singing or vocalizations.

6 The absence of mandatory restrictions was then cemented on May 10, when the State
7 entered into a stipulation in *Harvest Rock Church v. Newsom*, for a judgment imposing a
8 statewide injunction against such limitations on religious activities in the future. (RJN, Exh. B.)
9 That injunction permanently bars the State from re-imposing COVID-19-related restrictions on
10 attendance during worship services similar to those at issue in Godspeak’s cross-complaint, as
11 well as the formerly-applicable restrictions on singing and chanting. (*Id.*) The State entered into
12 an identical stipulated permanent injunction two weeks later in another federal district court case,
13 *S. Bay United Pentecostal Church v. Newsom*. (RJN, Exh. C.) And, on June 14, the State entered
14 into a stipulation for a judgment imposing an identical statewide injunction in Kern County
15 Superior Court, in *Burfitt v. Newsom*. (RJN, Exh. A.)⁶

16 Meanwhile, COVID-19 cases and deaths began dropping sharply in February 2021, as a
17 result of the Regional Stay at Home Order and as vaccines became more widely available. This
18 allowed the State to further relax restrictions, and, on May 21, 2021, the Governor and public
19 health officials announced that, as of June 15, 2021, the Blueprint and related sector guidance
20 (including all capacity restrictions on indoor commercial and social activities) would be lifted in
21 their entirety, provided that vaccine supplies remained adequate. (RJN, Exh. M.) On June 11,
22 2021, the Governor issued Executive Order N-07-21, which rescinded Executive Order N-33-20
23 (the stay-at-home order) and Executive Order N-60-20 (the order directing the Public Health
24 Officer to issue a risk-based framework for reopening the economy), as well as “all restrictions on

25
26 ⁶ The *Harvest Rock*, *South Bay*, and *Burfitt* injunctions contain an exception permitting
27 new capacity or numerical restrictions to be imposed on worship services and gatherings at places
28 of worship in the event of a severe upswing in infections and hospitalizations, but even in the
unlikely event this exception were to be triggered, the State would be limited to imposing
capacity or numerical restrictions “that are either identical to, or at least as favorable as,” the
restrictions imposed on secular gatherings of similar risk. (See RJN, Exhs. A-C.)

1 businesses and activities deriving from that framework, including all aspects of the Blueprint for a
2 Safer Economy,” effective June 15, 2021. (RJN, Exh. N.) The order stated that this “full
3 reopening” is appropriate because of the current COVID-19 outlook, including the fact that “as of
4 June 9, 2021, 54.3% of eligible Californians have received a full course of COVID-19
5 vaccination, raising the level of overall immunity in the State,” and that “the State continues to
6 promote and facilitate vaccination of all eligible Californians.” (*Id.*) It noted, “the effective
7 actions of Californians over the past fifteen months have successfully curbed the spread of
8 COVID-19, resulting in dramatically lower disease prevalence and death, in the State.” (*Id.*)
9 Another executive order, EO N-08-21, signed on June 11, 2021, rescinded many of the State’s
10 other restrictions addressing COVID-19. (RJN, Exh. O.)

11 Additionally, on June 11, 2021, the State Public Health Officer issued an order that
12 expressly supersedes the Officer’s prior order establishing the Blueprint (the August 28, 2020,
13 Order), as well as earlier related orders—including the orders that had imposed operational and
14 capacity restrictions in response to the Summer 2020 surge in cases (July 13, 2020), and imposed
15 the original Stay at Home Order (March 19, 2020). (RJN, Exh. P.) As of June 15, the State
16 Public Health Officer requires only that individuals follow the State’s masking guidance, the
17 State’s rules on large indoor events with over 5,000 attendees, and the State’s COVID-19 Public
18 Health Guidance for school and youth activities. The order specifies that, aside from those
19 requirements, the Department will not issue any other mandatory health directives. (*Id.*)

20 Of the remaining restrictions, the only one that applies to indoor worship services is the
21 requirement (effective June 15, 2021) that unvaccinated people wear face coverings indoors
22 (RJN, Exh. P, Q, R); it is not challenged in the SAC.⁷

23 **III. THIS ACTION**

24 As alleged in its pleadings, Godspeak limited its in-person worship services for about two
25 weeks following the issuance of the Stay-at-Home Order in March 2020. (Cross-Complaint,

26 _____
27 ⁷ The Order offers all business and organizations (including houses of worship) several
28 ways to comply with this requirement, including allowing individuals to self-attest that they are
vaccinated, implementing a vaccination verification system, or requiring all individuals to wear a
mask. (RJN, Exh. Q.)

1 ¶¶ 16-20 (Dkt. No. 80); First Amended Complaint, ¶¶ 16-20 (Dkt. No. 131); SAC, ¶¶ 19-23 (Dkt.
2 No. 151.) It thereafter began openly violating the rules, holding three services at full capacity
3 every Sunday. (*Id.*) Godspeak continued to hold services in violation of various State and
4 County public health orders concerning capacity limits, distancing, and masks. (*Id.*)

5 Ventura County filed suit against Godspeak on August 5, 2020, and sought a temporary
6 restraining order requiring Godspeak to comply with applicable public health orders. (See Dkt.
7 No. 1.) The Court granted the requested TRO, as well as the County’s subsequent requests for a
8 preliminary injunction and a contempt order. (See Dkt Nos. 22, 41, 86, 102.)⁸

9 On September 8, 2020, Godspeak filed a Cross-Complaint against Ventura County and
10 Ventura County Public Health Director Robert Levin, M.D., Governor Gavin Newsom, and
11 (former) State Public Health Officer Dr. Erica Pan (who has been succeeded by Dr. Tomás J.
12 Aragón) (all in their official capacities), alleging that capacity restrictions on indoor worship
13 services violated their rights under the California Constitution.⁹ (See Dkt. No. 80.) On February
14 1, 2021, Godspeak filed a first amended cross-complaint adding claims based on the U.S.
15 Constitution, and on May 20, 2021 it filed the SAC, adding new factual allegations. (Dkt. Nos.
16 131, 151.) Based on a stipulation of the parties, Cross-Defendants’ responsive pleadings are due
17 on July 15, 2021. (Dkt. No. 155.)

18 The SAC alleges eleven causes of action challenging the State’s now-defunct capacity
19 restrictions on indoor worship services, including state and federal constitutional claims for
20 violation of free exercise of religion (first and ninth claims), freedom of speech and assembly
21 (second, third, tenth, and eleventh claims), and equal protection (fifth claim), as well as a claim
22 alleging a violation of the federal Establishment Clause (fourth claim). In connection with the
23 Governor’s since-rescinded Executive Orders to combat the spread of COVID-19, Godspeak also
24 challenges the Emergency Services Act (ESA), under which the Governor issued those orders, on
25 grounds that it violates separation of powers (specifically, the non-delegation doctrine), the ban

26 ⁸ The County voluntarily dismissed its action against Godspeak on April 14, 2021, so
27 Godspeak is not currently **subject** to any injunction. (Dkt. no. 144.)

28 ⁹ Godspeak did not **serve** the Cross-Complaint on the State Cross-Defendants until
February 22, 2021. (Dkt. Nos. 80, 134-135.)

1 on legislative vetoes, and the rights to liberty and due process under the State Constitution (sixth,
2 seventh and eighth claims).¹⁰

3 As relief, the SAC prays for an injunction barring the State from enforcing the State health
4 orders in a manner that would “discriminat[e] against [its] right to assembly, speech, and free
5 exercise of religion,” and requiring the State to apply the Orders in a manner that “treats [its]
6 faith-based gathering on equal terms and in an equal manner with that afforded other non-faith-
7 based gatherings.”¹¹ The SAC also requests a declaratory judgment that the orders are
8 unconstitutional. Finally, the SAC seeks an award of “nominal” and/or “compensatory damages.”
9 (SAC, Prayer for Relief.)

10 LEGAL STANDARD

11 A party may demur to a complaint on the ground that the complaint does not state facts
12 sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (a).) A demurrer tests
13 the legal sufficiency of factual allegations in a complaint. (*Rakestraw v. Cal. Physicians' Service*
14 (2000) 81 Cal.App.4th 39, 42.) In reviewing the sufficiency of a complaint against a general
15 demurrer, the court accepts the truth of all well-pleaded facts. (*Blank v. Kirwan* (1985) 39 Cal.3d
16 311, 318.) However, it does not accept contentions, deductions, or conclusions of law or fact.
17 (*Ibid.*) The court also accepts as true the contents of any exhibits attached to the complaint.
18 (*Building Permit Consultants, Inc. v. Mazur* (2004) 122 Cal.App.4th 1400, 1409.) The contents
19 of incorporated documents take precedence over and supersede any inconsistent or contrary
20 allegations set out in the pleading. (*Ibid.*) The court may also consider matters outside the

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22
23 ¹⁰ Godspeak has not separately challenged the State’s former singing and chanting
24 restrictions and face-covering requirements. (See SAC, *passim*.) While the SAC notes in
25 conclusory fashion that Governor Newsom “banned indoor singing and chanting activities” on
26 July 6, 2020 (¶ 50), and describes the face-covering guidance issued by CDPH on November 16,
27 2020 (¶¶ 56-59), Godspeak nowhere alleges that houses of worship were treated less favorably
28 than any other sector or activity under these restrictions. (See also SAC ¶¶ 38, 36, 154.) At any
rate, any claims based on the State’s former singing restrictions, rescinded on April 23, 2021, or
former face-covering restrictions, rescinded on June 15, 2021, would be moot for the same
reasons that Godspeak’s challenges to the capacity restrictions are moot.

¹¹ Godspeak additionally requests that the injunction “permit [Godspeak] the opportunity
to comport [its] behavior to any further limitations or restrictions that Cross-Defendants may
impose” (*Id.*)

1 pleading that are judicially noticeable. (*Blank v. Kirwan, supra*, 39 Cal.3d at p. 318.) The burden
2 of proving there is a possibility of curing any defects by amendment is on the plaintiff. (*Id.*)

3 **ARGUMENT**

4 **I. GODSPEAK’S CROSS-COMPLAINT IS MOOT BECAUSE THE CHALLENGED**
5 **RESTRICTIONS HAVE BEEN RESCINDED AND CANNOT BE REIMPOSED.**

6 Godspeak seeks an injunction barring the State from enforcing the challenged State
7 Orders—that is, the Orders imposing capacity restrictions on indoor worship services—in any
8 manner that will infringe on its constitutional and statutory rights, and requiring it to apply those
9 Orders in a manner that treats churches “on equal terms” with “non-faith based gatherings.”
10 (SAC.) It further requests a declaratory judgment that the capacity restrictions are
11 unconstitutional. Because the challenged “Orders” were rescinded months ago and are no longer
12 in effect—and because, as of June 15, the Executive Orders and State Public Health Officer Order
13 underlying those Orders imposing capacity restrictions have been terminated as well—the action
14 is moot in its entirety and should be dismissed.

15 As explained above, the capacity restrictions on indoor worship services that Godspeak
16 challenges were eliminated on April 12. Since that date, the State has not imposed any
17 mandatory capacity restrictions on worship services. Godspeak’s congregants may worship
18 together indoors (or out) in any numbers, and have been able to do so for nearly three months.
19 Further, effective June 15, 2021, the Blueprint for a Safer Economy and all related restrictions
20 were rescinded.¹²

21 Because the capacity restrictions that are the subject of Godspeak’s challenges already have
22 been rescinded, their claims against the State are moot. “California courts will decide only
23 justiciable controversies.” (*Wilson & Wilson v. City Council of Redwood City* (2011) 191

24 _____
25 ¹² Although houses of worship (like every other indoor business) remain subject to limited
26 face-covering requirements for unvaccinated persons, that is the only restriction that still applies
27 to them, it is not challenged in the SAC, and there would be no basis to challenge it, since it
28 applies across the board. (RJN, Exh. Q, R.) Challenges to the prior iteration of the State’s face-
covering requirements, which were stricter than the current requirements, have been rejected by
federal courts. (*Forbes v. County of San Diego et al.* (S.D. Cal. March 4, 2021), No. 20-cv-
00998-BAS-JLB, 2021 WL 843175 (granting motion to dismiss); *Young v. Becerra* (N.D. Cal.
Apr. 7, 2021), No. 3:20-cv-05628-JD, 2021 WL 1299069 (same).)

1 Cal.App.4th 1559, 1573, citations omitted (*Wilson*.) Courts “will not render opinions on moot
2 questions or abstract propositions, or declare principles of law which cannot affect the matter at
3 issue.” (*Daily Journal Corp. v. County of L.A.* (2009) 172 Cal.App.4th 1550, 1557.) This is true
4 whether Plaintiffs seek declaratory or injunctive relief. (*Roger v. County of Riverside* (2020) 44
5 Cal.App.5th 510, 530.)

6 A case becomes moot when “the question addressed was at one time a live issue in the
7 case,” but is no longer live “because of events occurring after the judicial process was initiated.”
8 (*Younger v. Super. Ct.* (1978) 21 Cal.3d 102, 120.) Relatedly, a plaintiff must show injury “as to
9 himself” to obtain injunctive or declaratory relief. (*People ex rel. Becerra v. Superior Court*
10 (*Ahn*) (2018) 29 Cal.App.5th 486, 496.) “The party must be able to demonstrate that he or she
11 has some such beneficial interest that is concrete and actual, and not conjectural or hypothetical.”
12 (*Teal v. Superior Court* (2014) 60 Cal.4th 595, 599, 179, citing *Holmes v. California Nat. Guard*
13 (2001) 90 Cal.App.4th 297, 314-315.) Godspeak cannot reasonably allege such “concrete and
14 actual” injury where, as here, the challenged restrictions have been rescinded, as have the
15 underlying orders that authorized and directed issuance of those restrictions.

16 “The pivotal question in determining if a case is moot is . . . whether the court can grant the
17 plaintiff any effectual relief.” (*Wilson, supra*, 191 Cal.App.4th at p. 1574.) And it is well-settled
18 that courts cannot grant effectual relief from orders that no longer exist. (See, e.g., *Ass’n of*
19 *Irrigated Residents v. Dep’t of Conservation* (2017) 11 Cal.App.5th 1202, 1222 [collecting cases];
20 *Nat’l Ass’n of Wine Bottlers v. Paul* (1969) 268 Cal.App.2d 741, 747 [“Since the [] order on
21 which this case is based is no longer in effect, a decision of this court obviously cannot affect it”];
22 *Delta Stewardship Council Cases* (2020) 48 Cal.App.5th 1014, 1053 [ruling that the court could
23 provide no effectual relief because the challenged portions of the Delta Plan were superseded by
24 amendments and “are no longer operative”]; *Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129, 133
25 [termination of milk pricing rendered appeal moot].) Because the restrictions challenged by

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27
28

Document received by the CA Supreme Court.

1 Godspeak are no longer effect, the Court cannot grant it any effectual relief and the case is
2 moot.¹³

3 Courts will sometimes decide moot cases when there is an “issue of broad public interest
4 that is likely to recur.” (*Sturgell v. Dept. of Fish & Wildlife* (2019) 43 Cal.App.5th 35, 46.) This
5 exception to the mootness doctrine does not apply under the circumstances here. Godspeak
6 cannot show that capacity restrictions are likely to be reimposed. (See *Paul v. Milk Depots, Inc.*,
7 *supra*, 62 Cal.2d at p. 133.)

8 First, the issues presented by Godspeak’s challenge could not reasonably be expected to
9 recur because the conditions that led the State to adopt the Blueprint and other health orders
10 imposing capacity restrictions are now absent. The State imposed those restrictions for a specific
11 purpose: to combat the spread of COVID-19 and prevent the State’s health care system from
12 being overwhelmed. (See RJN, Exh. D, E, F.) The restrictions were adopted because, the State
13 had no other immediate options to deal with the COVID-19 emergency at the time, when there
14 was neither a cure for the disease nor a vaccine. (*Id.*) But now, case and hospitalization rates are
15 dramatically lower, and the State now has better options to control the pandemic.

16 When the capacity restrictions applicable to houses of worship were loosened in February
17 and made voluntary in April, vaccination rates were already increasing and infection rates
18 dropping. As that trend continued, the Governor announced on April 6, 2021 that the State would
19 be retiring the Blueprint on June 15, 2021 and fully reopening the economy, assuming vaccine

20
21 ¹³ For these same reasons, many other courts have recognized that challenges to other
22 States’ COVID-19 restrictions became moot when those States began rescinding them, even in
23 earlier stages of the pandemic and prior to the widespread availability of vaccination. (*Ramsek v.*
24 *Beshear* (6th Cir. 2021) 989 F.3d 494, 499–500 [“With the lifting of the Order, Ramsek has
25 achieved the relief he sought through this litigation—the Order is ‘off the books,’ and Ramsek is
26 free to protest in groups greater than ten, subject to health and safety precautions. And, critically,
27 we see no reasonable possibility that that the Order will be reinstated while the district court
28 considers any remaining matters.”]; *Herndon v. Little* (D. Idaho Jan. 7, 2021) No. 1:20-cv-00205-
DCN, 2021 WL 66657, at *5 [“Of course, nobody knows what the future will bring, particularly
with the COVID-19 pandemic; but, under the circumstances and given the details of Idaho’s Stay
Healthy Orders, it appears reasonably likely that the restrictions will not be reimposed at a future
time.”]; *Fontana v. Cantrell, et al.* (E.D. La. June 17, 2021) No. CV 21-326, 2021 WL 2514682,
at *2 [“And while it is true that the City’s most recent policy update occurred after this litigation
commenced, the timing (more than three months after Fontana’s initial complaint) and the fact
that this relaxation mirrors a nationwide trend offer the Court no reason to suspect that the City
Defendants are trying to evade liability in this suit.”].) The same result is warranted here.

1 supply remained sufficient and hospitalization rates remained low. That came to pass; the
2 Blueprint and related orders were indeed rescinded on June 15 based on continued progress on the
3 identified metrics. These decisions were made possible by high vaccination rates in California,
4 and the State’s “decisive and meaningful actions to reduce the spread, and mitigate the impacts,
5 of COVID-19,” which have led to “dramatically lower disease prevalence and death.” (See RJN,
6 Exh. L-N.) Because of widespread vaccinations, infection rates and in California have
7 plummeted, and the State no longer faces a threat that the State’s health care system will be
8 overwhelmed. (*Id.*) To the contrary, all available evidence suggests a resurgence of cases,
9 hospitalizations, and deaths to the level that prompted the Blueprint and the other now-rescinded
10 public health directives at issue is unlikely to occur in light of the percentage of eligible
11 Californians who are fully vaccinated. (*Id.*) As a result, it is no longer necessary to restrict
12 attendance at indoor gatherings (including worship services) in order to combat the spread of
13 COVID-19, and there is no reason to expect that the restrictions challenged here will be
14 reinstated. In these circumstances, any notion that the State will reimpose restrictions akin to the
15 ones Godspeak is challenging would be “highly speculative.” (*National Ass’n of Wine Bottlers v.*
16 *Paul, supra.* 268 Cal.App.2d at p. 747.)¹⁴

17 Even if there were any reason for doubt about that, and there is not, the State is now subject
18 to stipulated, statewide injunctions that *permanently prohibit* it from reimposing capacity
19 restrictions like the ones challenged here. Specifically, federal and state courts have now
20 prohibited the State from issuing or enforcing regulations in connection with the COVID-19 State

21
22 ¹⁴ Nor can Godspeak avoid mootness by arguing that its constitutional challenges to the
23 ESA (causes of action six, seven, and eight) continue to present a live controversy, even though
24 the Blueprint itself and related orders are now rescinded. Godspeak does not (and cannot) have
25 standing to assert a generalized challenge to the State’s emergency powers untethered to the
26 specific health orders that allegedly impacted its operations. (*Building a Better Redondo, Inc. v.*
27 *City of Redondo Beach* (2012) 203 Cal.App.4th 852, 866 [“[a]n action that involves only abstract
28 or academic questions of law cannot be maintained”].) Even more fundamentally, Godspeak’s
challenges to the ESA ignore that the Blueprint was issued by public health authorities pursuant
to grants of statutory authority that are separate and independent from the ESA. (See footnote 3,
supra.) Because those provisions of the Health and Safety Code fully authorize the Blueprint,
and the SAC does not challenge their constitutionality, Godspeak’s constitutional challenges to
the ESA present no justiciable controversy, because they would not affect the outcome of the
case. (See, e.g., *Wilson & Wilson v. City Council of Redwood City, supra*, 191 Cal.App.4th at
1574.)

1 of Emergency declared on March 4, 2020 that impose “any capacity or numerical restrictions on
2 religious worship services and gatherings at places of worship,” unless hospital admissions or
3 daily case rates reach specified, extreme thresholds. Even in that event, the State may only
4 “impose capacity or numerical restrictions . . . that are either identical to, or at least as favorable,
5 the restrictions imposed on similar gatherings of similar risk . . .” (RJN, Exh. A-C.) The State
6 is further enjoined from imposing “any new public health precautions on religious worship
7 services . . . not in the [now-rescinded] guidance, unless those precautions are either identical to,
8 or at least as favorable as, the precautions imposed on other similar gatherings of similar risk,”
9 consistent with the U.S. Supreme Court’s recent decisions. (*Ibid.*)

10 It is well-settled that “[r]elief from another tribunal may moot an action.” (*Sea-Land*
11 *Services, Inc. v. ILWU* (9th Cir. 1991) 939 F.2d 866, 870, citing *Enrico’s, Inc. v. Rice* (9th Cir.
12 1984) 730 F.2d 1250, 1253-54 [decision by California Court of Appeal mooted petitioner’s
13 request for injunctive relief in federal district court].) Accordingly, the relief sought by
14 Godspeak—an injunction barring enforcement of the challenged capacity restrictions, and
15 requiring the State to “apply the Orders in a manner that treats . . . faith-based gatherings on equal
16 terms and in an equal manner with that afforded other non-faith-based gatherings” (SAC Prayer
17 for Relief, ¶ B.b.)—has already been provided. Because Godspeak already has obtained all the
18 injunctive relief it seeks and more, there is no longer a live controversy in this matter; the case is
19 moot. (*See People v. Dunley* (2016) 247 Cal.App.4th 1438.)

20 **II. GODSPEAK’S PRAYER FOR DAMAGES DOES NOT CREATE A LIVE CONTROVERSY**
21 **BECAUSE THE STATE CROSS-DEFENDANTS ARE IMMUNE AS A MATTER OF LAW**

22 Finally, the SAC’s perfunctory prayer for *retrospective* relief, i.e., damages, cannot save the
23 SAC. The Governor and the Public Health Director are immune from such claims, and because
24 the prayer for retroactive relief is barred, it cannot create an ongoing controversy and overcome
25 mootness.

26 “[T]he States’ immunity from suit is a fundamental aspect of the sovereignty which the
27 States enjoyed before the ratification of the Constitution, and which they retain today . . .”
28 (*Alden v. Maine* (1999) 527 U.S. 706, 713.) “[S]overeign immunity is the rule in California;

1 governmental liability is limited to exceptions specifically set forth by statute.” (*People ex rel.*
2 *Grijalva v. Superior Court* (2008) 159 Cal.App.4th 1072, 1079; see Gov. Code, § 815 [similar];
3 *County of L.A. v. Superior Court* (2009) 181 Cal.App.4th 218, 233 [explaining that a suit against
4 a state official in his or her official capacity “is no different from a suit against the State itself.”].)
5 No statute authorizes damages against the State Cross-Defendants, and California law bars such
6 suits, including suits for alleged violations of the California Constitutional provisions cited in the
7 SAC. (See, e.g., Gov. Code, §§ 815, 818.2, 820.2, 821; see *Katzberg v. Regents of Univ. of*
8 *California* (2002) 29 Cal.4th 300, 328 [no damages remedy for alleged violation of due process
9 under California Constitution]; *Javor v. Taggart* (2002) 98 Cal.App. 4th 795, 807 [no damages
10 for alleged violation of due process or equal protection under the California Constitution].)¹⁵

11 Godspeak also cannot obtain damages for alleged violations of federal constitutional
12 provisions under 42 U.S.C. section 1983. It is well-established that no damages may be
13 recovered against a State or, as here, its officials acting in their official capacity, for civil rights
14 violations under section 1983, because such defendants are not “persons” subject to a suit for
15 damages under that section. (*Will v. Michigan Department of State Police* (1989) 491 U.S. 58;
16 *Hafer v. Melo* (1991) 502 U.S. 21, 30 [State officers sued for damages in their official capacities
17 are not “persons” for purposes of the suit because they assume the rights of the government that
18 employs them].)

19 CONCLUSION

20 For the foregoing reasons, the State Cross-Defendants’ demurrer to all causes of action
21 alleged against them should be sustained without leave to amend.

22
23 ¹⁵ Even if damages were available in theory (and they are not), the SAC fails to allege that
24 Godspeak complied with the Government Claims Act, which is a mandatory prerequisite to
25 maintaining a damages claim against the State or a State official. (Gov. Code, §§ 945.4, 945.6,
26 911.2; *Ovando v. County of L.A.* (2008) 159 Cal.App.4th 42 [plaintiff suing the state for damages
27 must allege facts demonstrating compliance with the government claim presentation requirement,
28 or an excuse for noncompliance, or the complaint is subject to dismissal]; *City of San Jose v.*
Superior Court (1974) 12 Cal.3d 447, 454-455) [fact that a claim is “founded directly on the
California Constitution” does not excuse a plaintiff from the mandatory claims presentation
requirement].) Godspeak’s failure to allege compliance with the mandatory claims presentation
requirement means that, even if the State Cross-Defendants were not immune (and they are), the
prayer for damages is barred as a matter of law.

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Dated: July 15, 2021

Respectfully Submitted,
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PROOF OF SERVICE

Case Name: *County of Ventura, et al v. Godspeak Calvary Chapel, et al.*

Case No.: 56-2020-00544086-CU-MC-VTA

I declare: I am employed by the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the Office of the Attorney General's business practice of collection and processing of correspondence for mailing with the United States Postal Service. Correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On July 15, 2021, I served the attached:

- **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF STATE CROSS-DEFENDANTS' DEMURRER TO SECOND AMENDED CROSS-COMPLAINT**

on the interested party(ies) in this action, in the following manner:

BY E-MAIL/ELECTRONIC TRANSMISSION: I transmitted a true copy of the foregoing document(s) via electronic mail to the e-mail addresses listed on the following "service list."

BY PERSONAL DELIVERY: I effected a true copy thereof to be hand delivered in person at opposing counsel's office at Tyler and Bursch, LLP, 25026 Las Brisas Road, Murrieta California, 92562, by dispatching a true copy of the foregoing document with "Ace Attorney Service, Inc" for them to personally serve and deliver the attached.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on July 15, 2021 at San Francisco, California.

Vanessa Jordan
Declarant


Signature

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EXHIBIT I

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State of California—Health and Human
Services Agency
**California Department of
Public Health**



August 2, 2021

TO: All Californians

SUBJECT: COVID-19 Public Health Guidance for K-12 Schools in California, 2021-22 School Year

Related Materials: 2021-2022 K-12 Schools Guidance Q&A | CDPH Guidance for the Use of Face Coverings | K-12 Schools Testing Framework 2021-2022 | Safe Schools for All Hub | American Academy of Pediatrics COVID-19 Guidance for Safe Schools

Updates as of August 2, 2021:

- Reflect updated universal indoor masking recommendations from the American Academy of Pediatrics and the CDC
- Clarify modified quarantine recommendations
- Refer to CDPH vaccine verification recommendations

On July 9, 2021, the Centers for Disease Control and Prevention (CDC) published its updated recommendations for K-12 schools. The following guidance applies CDC's recommendations to the California context, in order to help K-12 schools formulate and implement plans for safe, successful, and full in-person instruction in the 2021-22 school year. This guidance is effective immediately and will be reviewed regularly by the California Department of Public Health (CDPH).

The foundational principle of this guidance is that all students must have access to safe and full in-person instruction and to as much instructional time as possible. In California, the surest path to safe and full in-person instruction at the outset of the school year, as well as minimizing missed school days in an ongoing basis, is a strong emphasis on the following: vaccination for all eligible individuals to get COVID-19 rates down throughout the community; universal masking in schools, which enables no minimum physical distancing, allowing all students access to full in-person learning, and more targeted quarantine practices, keeping students in school; and access to a robust COVID-19 testing program as an available additional safety layer. Recent evidence indicates that in-person instruction can occur safely without minimum physical distancing requirements when other mitigation strategies (e.g., masking) are fully implemented. This is consistent with CDC K-12 School Guidance.

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Masks are one of the most effective and simplest safety mitigation layers to prevent in-school transmission of COVID-19 infections and to support full time in-person instruction in K-12 schools. SARS-CoV-2, the virus that causes COVID-19, is transmitted primarily by aerosols (airborne transmission), and less frequently by droplets. Physical distancing is generally used to reduce only droplet transmission, whereas masks are one of the most effective measures for source control of **both** aerosols and droplets. Therefore, masks best promote both safety and in-person learning by reducing the need for physical distancing. Additionally, under the new guidance from the CDC, universal masking also permits modified quarantine practices under certain conditions in K-12 settings, further promoting more instructional time for students. Universal masking indoors in K-12 schools is recommended by the American Academy of Pediatrics and by the CDC in their Guidance for COVID-19 Prevention in K-12 schools (updated July 27, 2021).

Finally, this approach takes into account a number of key considerations: current unknowns associated with variants and in particular the Delta Variant, which is more transmissible; operational barriers of tracking vaccination status in order to monitor and enforce mask wearing; and potential detrimental effects on students of differential mask policies. Detrimental effects of differential mask policies include: potential stigma, bullying, isolation of vaccinated OR unvaccinated students, depending on the culture and attitudes in the school or surrounding community.

CDPH will continue to assess conditions on an ongoing basis, and will determine no later than November 1, 2021, whether to update mask requirements or recommendations. Indicators, conditions, and science review will include vaccination coverage status, in consideration of whether vaccines are available for children under 12, community case and hospitalization rates, outbreaks, and ongoing vaccine effectiveness against circulating variants of SARS-CoV-2, the virus that causes COVID-19 in alignment with the CDC-recommended indicators to guide K-12 school operations.

This guidance is designed to enable all schools to offer and provide full in-person instruction to all students safely, consistent with the current scientific evidence about COVID-19, even if pandemic dynamics shift throughout the school year, affected by vaccination rates and the potential emergence of viral variants.

This guidance includes mandatory requirements, in addition to recommendations and resources to inform decision-making. Implementation requires training and support for staff and adequate consideration of student and family needs. Stricter guidance may be issued by local public health officials or other authorities.

COVID-19 vaccination is strongly recommended for all eligible people in California, including teachers, staff, students, and adults sharing homes with these members of our K-12 communities. See CDC recommendations about how to promote vaccine access and uptake for schools. Additional California-specific vaccine access information is available on the Safe Schools Hub and Vaccinate All 58 – Let's Get to Immunity.

In workplaces, employers are subject to the Cal/OSHA COVID-19 Emergency Temporary Standards (ETS) or in some workplaces the CalOSHA Aerosol Transmissible Diseases Standard, and should consult those regulations for additional applicable requirements.

General Considerations:

Consideration should be given to both the direct school population as well as the surrounding community. The primary factors to consider include: 1) level of community transmission of COVID-19; 2) COVID-19 vaccination coverage in the community and among students, faculty, and staff; and 3) any local COVID-19 outbreaks or increasing trends. Discussion of these factors should occur in collaboration with local or state public health partners.

As the CDC explained in its July 9, 2021 Guidance:

“Schools will have a mixed population of both people who are fully vaccinated and people who are not fully vaccinated. . . These variations require K-12 administrators to make decisions about the use of COVID-19 prevention strategies in their schools to protect people who are not fully vaccinated. . . Together with local public health officials, school administrators should consider multiple factors when they make decisions about implementing layered prevention strategies against COVID-19.”

In an effort to streamline and tailor this decision-making process for the California context, guidance regarding each of the measures that can be used in a layered prevention strategy is provided below.

Safety Measures for K-12 Schools

1. Masks

- a. Masks are optional outdoors for all in K-12 school settings.
- b. K-12 students are required to mask indoors, with exemptions per CDPH face mask guidance. Adults in K-12 school settings are required to mask when sharing indoor spaces with students.
- c. Persons exempted from wearing a face covering due to a medical condition, must wear a non-restrictive alternative, such as a face shield with a drape on the bottom edge, as long as their condition permits it.
- d. Schools must develop and implement local protocols to provide a face covering to students who inadvertently fail to bring a face covering to school to prevent unnecessary exclusions.
- e. Consistent with guidance from the 2020-21 school year, schools must develop and implement local protocols to enforce the mask requirements. Additionally, schools should offer alternative educational opportunities for students who are excluded from campus because they will not wear a face covering. Note: Public schools should be aware of the requirements in AB 130 to offer independent study programs for the 2021-22 school year.
- f. In limited situations where a face covering cannot be used for pedagogical or developmental reasons, (e.g., communicating or assisting young children or those with special needs) a face shield with a drape (per CDPH guidelines) can be used instead of a face covering while in the classroom as long as the wearer maintains physical distance from others. Staff must return to wearing a face covering outside of the classroom.

2. Physical distancing

- a. Recent evidence indicates that in-person instruction can occur safely without minimum physical distancing requirements when other mitigation strategies (e.g., masking) are implemented. This is consistent with CDC K-12 School Guidance.

3. Ventilation recommendations:

- a. For indoor spaces, ventilation should be optimized, which can be done by following CDPH Guidance on Ventilation of Indoor Environments and Ventilation and Filtration to Reduce Long-Range Airborne Transmission of COVID-19 and Other Respiratory Infections: Considerations for Reopened Schools.

4. Recommendations for staying home when sick and getting tested:

- a. Follow the strategy for Staying Home when Sick and Getting Tested from the CDC.

- b. Getting tested for COVID-19 when symptoms are consistent with COVID-19 will help with rapid contact tracing and prevent possible spread at schools.
 - c. Advise staff members and students with symptoms of COVID-19 infection not to return for in-person instruction until they have met CDPH criteria to return to school for those with symptoms:
 - i. At least 24 hours have passed since resolution of fever without the use of fever-reducing medications; and
 - ii. Other symptoms have improved; and
 - iii. They have a negative test for SARS-CoV-2, OR a healthcare provider has provided documentation that the symptoms are typical of their underlying chronic condition (e.g., allergies or asthma) OR a healthcare provider has confirmed an alternative named diagnosis (e.g., Streptococcal pharyngitis, Coxsackie virus), OR at least 10 days have passed since symptom onset.
5. Screening testing recommendations:
- a. CDPH has a robust State- and Federally-funded school testing program and subject matter experts available to support school decision making, including free testing resources to support screening testing programs (software, test kits, shipping, testing, etc.).
 - i. Resources for schools interested in testing include: California's Testing Task Force K-12 Schools Testing Program, K-12 school-based COVID-19 testing strategies and Updated Testing Guidance; The Safe Schools for All state technical assistance (TA) portal; and the CDC K-12 School Guidance screening testing considerations (in Section 1.4 and Appendix 2) that are specific to the school setting.
6. Case reporting, contact tracing and investigation
- a. Per AB 86 (2021) and California Code Title 17, section 2500, schools are required to report COVID-19 cases to the local public health department.
 - b. Schools or LEAs should have a COVID-19 liaison to assist the local health department with contact tracing and investigation.
7. Quarantine recommendations for vaccinated close contacts
- a. For those who are vaccinated, follow the CDPH Fully Vaccinated People Guidance regarding quarantine.
8. Quarantine recommendations for unvaccinated students for exposures when both parties were wearing a mask, as required in K-12 indoor settings. These are adapted from the CDC K-12 guidance and CDC definition of a close contact.
- a. When both parties were wearing a mask in any school setting in which students are supervised by school staff (including indoor or outdoor school settings and school buses, including on buses operated by public and private school systems), unvaccinated students who are close contacts (more than 15 minutes over a 24-hour period within 0-6 feet indoors) may undergo a modified quarantine as follows. They may continue to attend school for in-person instruction if they:

- i. Are asymptomatic;
 - ii. Continue to appropriately mask, as required;
 - iii. Undergo at least twice weekly testing during the 10-day quarantine; and
 - iv. Continue to quarantine for all extracurricular activities at school, including sports, and activities within the community setting.
- 9. Quarantine recommendations for: unvaccinated close contacts who were not wearing masks or for whom the infected individual was not wearing a mask during the indoor exposure; or unvaccinated students as described in #8 above.
 - a. For these contacts, those who remain asymptomatic, meaning they have NOT had any symptoms, may discontinue self-quarantine under the following conditions:
 - i. Quarantine can end after Day 10 from the date of last exposure without testing; OR
 - ii. Quarantine can end after Day 7 if a diagnostic specimen is collected after Day 5 from the date of last exposure and tests negative.
 - b. To discontinue quarantine before 14 days following last known exposure, asymptomatic close contacts must:
 - i. Continue daily self-monitoring for symptoms through Day 14 from last known exposure; AND
 - ii. Follow all recommended non-pharmaceutical interventions (e.g., wearing a mask when around others, hand washing, avoiding crowds) through Day 14 from last known exposure.
 - c. If any symptoms develop during this 14-day period, the exposed person must immediately isolate, get tested and contact their healthcare provider with any questions regarding their care.
- 10. Isolation recommendations
 - a. For both vaccinated and unvaccinated persons, follow the CDPH Isolation Guidance for those diagnosed with COVID-19.
- 11. Hand hygiene recommendations
 - a. Teach and reinforce washing hands, avoiding contact with one's eyes, nose, and mouth, and covering coughs and sneezes among students and staff.
 - b. Promote hand washing throughout the day, especially before and after eating, after using the toilet, and after handling garbage, or removing gloves.
 - c. Ensure adequate supplies to support healthy hygiene behaviors, including soap, tissues, no-touch trashcans, face coverings, and hand sanitizers with at least 60 percent ethyl alcohol for staff and children who can safely use hand sanitizer.
- 12. Cleaning recommendations
 - a. In general, cleaning once a day is usually enough to sufficiently remove potential virus that may be on surfaces. Disinfecting (using disinfectants on the U.S. Environmental Protection Agency COVID-19 list) removes any remaining germs on surfaces, which further reduces any risk of spreading infection.

- b. For more information on cleaning a facility regularly, when to clean more frequently or disinfect, cleaning a facility when someone is sick, safe storage of cleaning and disinfecting products, and considerations for protecting workers who clean facilities, see *Cleaning and Disinfecting Your Facility*.
 - c. If a facility has had a sick person with COVID-19 within the last 24 hours, clean AND disinfect the spaces occupied by that person during that time.
13. Food service recommendations
- a. Maximize physical distance as much as possible while eating (especially indoors). Using additional spaces outside of the cafeteria for mealtime seating such as classrooms or the gymnasium can help facilitate distancing. Arrange for eating outdoors as much as feasible.
 - b. Clean frequently touched surfaces. Surfaces that come in contact with food should be washed, rinsed, and sanitized before and after meals.
 - c. Given very low risk of transmission from surfaces and shared objects, there is no need to limit food service approaches to single use items and packaged meals.
14. Vaccination verification considerations
- a. To inform implementation of prevention strategies that vary by vaccination status (testing, contact tracing efforts, and quarantine and isolation practices), refer to the CDPH vaccine verification recommendations.
15. COVID-19 Safety Planning Transparency Recommendations
- a. In order to build trust in the school community and support successful return to school, it is a best practice to provide transparency to the school community regarding the school's safety plans. It is recommended that at a minimum all local educational agencies (LEAs) post a safety plan, communicating the safety measures in place for 2021-22, on the LEA's website and at schools, and disseminate to families in advance of the start of the school year.
- Note: With the approval of the federal American Rescue Plan, each local educational agency receiving Elementary and Secondary School Emergency Relief (ARP ESSER) funds is required to adopt a Safe Return to In-Person Instruction and Continuity of Services Plan and review it at least every six months for possible revisions. The plan must describe how the local educational agency will maintain the health and safety of students, educators and other staff. Reference the Elementary and Secondary School Relief Fund (ESSER III) Safe Return to In-Person Instruction Local Educational Agency Plan Template.

Additional considerations or other populations

- 1. Disabilities or other health care needs recommendations
 - a. When implementing this guidance, schools should carefully consider how to address the legal requirements related to provision of a free appropriate public education and requirements to reasonably accommodate disabilities, which continue to apply.
 - b. Refer to the CDC K-12 guidance section on "Disabilities or other health care needs" for additional recommendations.
- 2. Visitor recommendations
 - a. Schools should review their rules for visitors and family engagement activities.

- b. Schools should limit nonessential visitors, volunteers, and activities involving external groups or organizations with people who are not fully vaccinated, particularly in areas where there is moderate-to-high COVID-19 community transmission.
- c. Schools should not limit access for direct service providers, but can ensure compliance with school visitor policies.
- d. Schools should continue to emphasize the importance of staying home when sick. Anyone, including visitors, who have symptoms of infectious illness, such as flu or COVID-19, should stay home and seek testing and care.
3. Boarding schools may operate residential components under the following guidance:
- a. COVID-19 vaccination is strongly recommended for all eligible people in California, including teachers, staff, students, and adults sharing homes with these members of our K-12 communities.** See CDC recommendations about how to promote vaccine access and uptake for schools. Additional California-specific vaccine access information is available on the Safe Schools Hub.
- b. Strongly recommend policies and practices to ensure that all eligible students, faculty and staff have ample opportunity to become fully vaccinated.
- c. Strongly recommend that unvaccinated students and staff be offered regular COVID-19 screening testing.
- d. Consider students living in multi-student rooms as a “household cohort.” Household cohort members, regardless of vaccination status, do not need to wear masks or physically distance when they are together without non-household cohort members nearby. If different “household cohorts” are using shared indoor when together during the day or night, continue to monitor and enforce mask use, and healthy hygiene behaviors for everyone.
- The non-residential components of boarding schools (e.g., in-person instruction for day students) are governed by the guidelines as other K-12 schools, as noted in this document.
4. Additional information about how this guidance applies to other supervised settings for K-12 school-aged children and youth (including activities such as band, drama) is forthcoming. Childcare settings and providers remain subject to separate guidance.

California Department of Public Health
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 Department Website (cdph.ca.gov)



EXHIBIT J

Document received by the CA Supreme Court.

California backtracks on kicking students off campuses for not wearing masks

July 13, 2021

By JOSH FRIEDMAN



The state of California is backtracking on the mask mandate it issued Monday for K-12 schools and has signaled it will let local school officials have some control over face covering policies.

Despite new guidance from the Centers for Disease Control and Prevention (CDC) suggesting fully vaccinated teachers and students no longer need to wear masks inside school buildings, the California Public Health Department on Monday issued guidelines stating schools must exclude students from campus who refuse to wear a face covering and are not exempt from the

mask requirement. Schools must offer other educational opportunities for students who cannot come to campus because they will not wear a mask, the new state guidelines say.

Several hours later, the state Public Health Department backtracked, tweeting that local schools would have say on the reopening of campuses.

"Update: California's school guidance will be clarified regarding mask enforcement, recognizing local school's experience in keeping students and educators safe while ensuring schools fully reopen for in-person instruction," the health department stated in the tweet.

Later Monday evening, a spokesman for Gov. Gavin Newsom said a revision to the K-12 coronavirus guidelines will allow local school officials to decide how to deal with students who refuse to wear masks.

The health department guidelines issued on Monday factor in problems related to physical distancing, difficulty of tracking vaccination status, unequal treatment of students and the COVID-19 Delta variant in calling for a K-12 mask mandate.

"Masks are one of the most effective and simplest safety mitigation layers to prevent in-school transmission of COVID-19 infections and to support full time in-person instructions in K-12 schools," the guidelines state.

Requiring masks reduces the need for physical distancing. Likewise, requiring some students to wear masks, but not others, could result in "potential stigma, bullying, isolation of vaccinated or unvaccinated students," the guidelines say.

As currently worded, the guidelines require students to wear masks indoors, but face coverings are optional outdoors on campuses. Adults are required to wear masks indoors if they are sharing spaces with students.

Presently, the guidelines do not require physical distancing in classrooms, so long as other mitigation strategies, like masks, are implemented.



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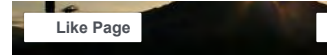
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EXHIBIT K

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POLITICS

Gov. Gavin Newsom expresses doubts about tougher vaccine rules

Newsom told reporters at the California Democratic Party Convention that he has concerns about having government officials sign off on vaccine exemptions.



Credit: AP

Gov. Gavin Newsom speaks during the 2019 California Democratic Party State Organizing Convention in San Francisco, Saturday, June 1, 2019. Gov. Newsom says he has concerns about enacting tougher rules that limit parents from choosing whether to vaccinate their schoolchildren. The measure would give state public health officials instead of local doctors the authority to decide which children can skip their shots before attending school. Newsom said Saturday that as a parent, he wouldn't want a bureaucrat to make personal decision for his family. (AP Photo/Jeff Chiu)

Author: Associated Press
Published: 5:00 PM PDT June 1, 2019
Updated: 5:00 PM PDT June 1, 2019



SAN FRANCISCO — Gov. Gavin Newsom says he has concerns about enacting tougher rules that limit doctors from granting medical exemptions for children's vaccinations.

The measure would give state public health officials instead of local doctors the authority to decide which children can skip their shots before attending school. It's being considered by the state Assembly amid growing cases of measles.

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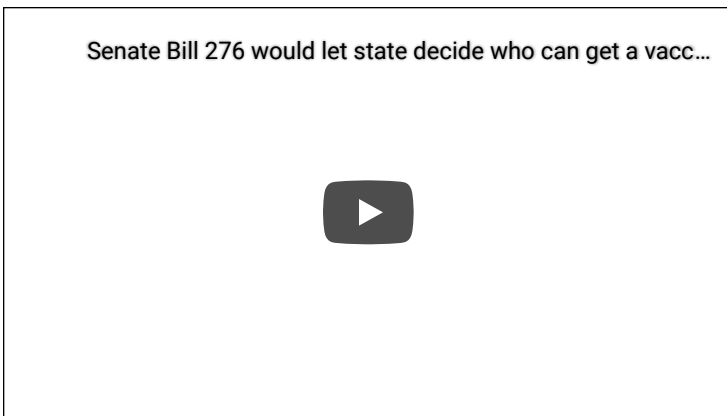
- [California lawmakers advance tougher vaccine rules](#)
- [US measles count surpasses 25-year-old record](#)
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Newsom told reporters at the [California Democratic Party Convention Saturday](#) that although he supports immunization, he has concerns about having government officials sign off on vaccine exemptions. He said as a parent, he wouldn't want a bureaucrat to make a personal decision for his family.

California does not allow exemptions based on personal beliefs, but still allows exemptions for children who must avoid vaccinations for medical reasons.

WATCH MORE: [Senate Bill 276 would let state decide who can get a vaccine exemption](#)

Currently, parents can file a doctor statement that explains how an immunization puts a child at risk. Then that child is exempt from getting the vaccine or vaccines. Senate Bill 276 would change all of that.



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Coronavirus Pandemic: Gov. Newsom Issues Statewide Stay-At-Home Order

March 19, 2020 at 11:15 pm Filed Under: [California](#), [Coronavirus](#), [COVID-19](#), [Governor Gavin Newsom](#), [Statewide](#), [stay-at-home order](#)



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SACRAMENTO (CBS SF/AP) — Stating that the people of California need to do more in the face of the growing coronavirus pandemic, Gov. Gavin Newsom Thursday evening announced a statewide stay-at-home order to reduce the threat of COVID-19.

Newsom’s office had already hinted at the weighty nature of what the governor would be talking about, noting that a “major announcement” would be made during a 6:30 p.m. address on the state’s response to the COVID-19 outbreak.

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“Our fate and future is inside of us. We’re not victims of circumstance,” Newsom said. “We can make decisions to meet moments. This is a moment we need to make tough decisions.”

Newsom continued: “A state as large as ours — a nation-state — is many parts. But, at the end of the day, we’re one body. And there’s a recognition of our interdependence that requires of this moment that we direct a statewide order for people to stay at home.”

The order matches the one that went into effect for the Bay Area earlier this week, shutting down all but essential businesses including grocery stores, takeout and delivery restaurants, banks, gas stations and laundromats and banks.

COMPLETE COVERAGE: [CORONAVIRUS PANDEMIC](#)

All dine-in restaurants, bars, nightclubs, entertainment venues, gyms and fitness studios, museums and convention centers are closed.

The statewide order went into effect immediately when announced Thursday night and would remain in place “until further notice.” More detailed information is available [at the state website](#).

The governor acknowledged the difficulty that would face residents with the new statewide order to remain at home, but insisted that such lengths were required to keep the coronavirus spread in check.

“We are looking at a delta, a gap, that requires about 10,000 beds, and 10,000 members of the community to staff those beds,” explained Newsom. “And that’s what we’re currently up against.”

Newsom said the state would secure the use of Seton Hospital in Daly City to expand the number of beds available in the Bay Area to treat the expected surge of coronavirus patients.



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Recently, the San Mateo County Board of Supervisors voted to approve \$20 million in funding to keep Seton open amid the current outbreak.

Verity Health Systems, the hospital's owner, filed for bankruptcy in 2018 and had been planning to shutter the hospital. The closure would have forced Daly City residents to travel further for urgent medical care and made it harder to treat homeless residents as well as current and future coronavirus patients.

Newsom stressed that widespread behavioral change from Californians is what will truly "bend the curve" of COVID-19 spread.

"There is a social contract here. People, I think, recognize the need to do more and to meet this moment. People will self regulate their behavior. They'll begin to adjust and adapt as they have been quite significantly," Newsom said during the address announcing the new order. "We will have social pressure, and that will encourage to do the right thing, and just, to nod and look, and say, 'Hey, maybe you should reconsider being out there on the beach, or 22-strong at a park.'"

Newsom noted that the Bay Area had already been under such an order for several days with much of the population abiding by the new restrictions.

"I'm being very straight with you," Newsom said. "These are numbers I can assure you governors, mayors, administration across the country are working with."

The governor also announced he will mobilize 500 California National Guard troops to help with food distribution but, he said, they will be in place only for humanitarian reasons.

Newsom also alluded to the hard time he had telling his own family how drastic the action the state would be taking in the face of the looming coronavirus threat.

"But I think it's time to tell you what I tell my family. What I tell my wife, just as I did two nights ago when I told my daughter when I don't believe that this school year she'll get back into that classroom," Newsom said.

Earlier Thursday, [Newsom offered a sobering prediction on the surge of coronavirus cases](#) coming to the state, projecting that more than half of the state's residents will become infected over an eight-week period.

Newsom issued the stark assessment in [a letter to President Donald Trump](#), requesting the immediate deployment of the USNS Mercy hospital ship to the Port of Los Angeles through the beginning of September.

"We project that roughly 56 percent of our population—25.5 million people—will be infected with the virus over an eight week period,"

said Newsom in the letter.

Newsom said in the letter that California has had 126 new COVID-19 cases in the last 24 hours – including 44 news community acquired transmission – a total increase of 21 percent. With the case rate doubling every four days in parts of the state, Newsom projected some 25.5 million Californians would eventually contract the virus.

A spokesman for the governor later on Thursday clarified, saying the 25.5 million cases represented a worst-case scenario without mitigation efforts such as business closures and shelter-in-place orders.

Here are the highlights of the governor’s new restrictions:

STAY AT HOME REQUIREMENTS

All Californians must stay at home except to get food, prescriptions and health care, care for a friend or relative, walking the dog and taking outdoor exercise such as walking, running or hiking. When people do go out, they should practice social distancing.

BUSINESSES

Most businesses and business venues such as indoor malls will be closed to the public. According to state health officials, they include dine-in restaurants; bars, nightclubs and other entertainment places where people gather, along with gyms and fitness studios. Convention centers and public events are also out of bounds.

WHAT’S STILL OPEN?

Businesses that provide essential services will remain open. They include grocery stores, farmers markets, food banks, convenience stores, pharmacies and other health care providers, news outlets, banks and laundromats. Restaurants can still provide take-out food and make deliveries. Businesses involved in construction and “essential infrastructure” such as plumbers, electricians, gas stations, auto repair shops and hardware stores also are exempt. Public transportation and utilities will continue to provide service.

ENFORCEMENT

Misdemeanor penalties apply but the governor said he hopes law enforcement won’t need to enforce the order and believes social pressure will encourage people to “do the right thing.”

HOW LONG WILL IT LAST?

Until further notice, according to the order. The governor didn’t give a prediction but said he doesn’t expect it to extend for “many, many months.”

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