



An Old-Fashioned Pentecostal Church

May 21, 2020

Governor Gavin Newsom
State Capitol
1303 10th Street, Suite 1173
Sacramento, CA 95814

Re.: Shelter at Home Orders; Science and Churches within California

Dear Governor Newsom:

I am writing to you from what is admittedly a unique point of reference. First, I am a pastor of a small church in the outskirts of the Bay Area in Contra Costa County. Secondly, as a bi-vocational pastor, I have been a Principle Scientist in either my own or some national firms, with nearly 40 years' experience in consulting to the healthcare industry, and the last 20 of those years consulting specifically (albeit non exclusively) to healthcare regarding the prevention and control of infectious disease in a healthcare setting, and, to a lesser extent, as a public health concern. I've consulted on everything from a potential Creutzfeldt-Jakob disease outbreak to the H1N1 pandemic of 2009-10. I've taught classes to doctors, public health nurses, scientists, laboratory technicians, California Department of Public Health personnel, air quality regulators and more, have been approved as an adjunct instructor for UC Berkeley's continuing education program, and have been teaching course materials related to infectious disease control and prevention for a number of years.

I've also performed work in the sciences on behalf of attorneys as an expert, have been involved directly in the writing of California Code (Business & Professions Code and Health & Safety Code), as well as several regulations on both a Federal and state level over the years; so am familiar with statutory law. My concerns are multifold, but this letter is dealing specifically with the current restrictions upon churches in the course of dealing with the current pandemic.

POTENTIAL IMPACT OF CHURCH MEETINGS ON THE SPREAD OF THE SARS-CoV-2 VIRUS

In a May 8, 2020 news article you were quoted as stating your concern thusly: *"Our fear is simply this, congregations of people from far and wide coming together in a closed space at a large scale remains a point of concern and anxiety for us."* From this statement I gather that you and your advisors do not

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understand several dynamics of the church world. For example, were you aware that less than 2% of churches have a Sunday attendance of more than 1,000 – and, by contrast, 57% of churches (a significant majority) in the United States have congregations of less than 100 people, including 21% who have less than 50 people attend on a Sunday. Approximately 11% have congregations over 250 peopleⁱ. Additionally, these people tend to be the same people who attend the same church, so the dynamic is much different than, for example, a Costco, which generally has a much more widely disparate population enter the store daily in numbers that far exceed those of a typical church (over 2,500/day on averageⁱⁱ), plus an average of 256 employees per store.

The potential for spreading a contagious virus in the average church is far less than it is in any large retail store such as Costco, Walmart, Raley's/Bel-Air, etc., especially if the same measures are used such as social distancing, ensuring symptomatic individuals stay home, etc.

By way of example, the church I am privileged to pastor has a seating capacity of 177. Our average attendance for a Sunday service ranges between 26 and 32 people, representing eight families plus occasional guests. Social distancing would be easy to accomplish, and rules such as not attending if you are sick, sanitizing routines, required hand-washing, etc. are easily employed. This attendance trend is the more common dynamic for most churches. Those who attend are generally the same people (a relatively static grouping), as opposed to a retail grocery store which has a much wider intermixing of people from across the local communities. In grocery stores produce and other items are often touched by multiple customers before taken into one shopper's cart, thus increasing the likelihood of spreading the virus through fomites. This dynamic is absent in a church setting. Based on these dynamics it is easy to see that the church setting is much less likely to contribute to the spread of the SARS-Cov-2 virus than virtually any store setting.

Even in larger churches, those churches are able to stagger services to limit the numbers of congregants on site at one time, and can easily employ sanitation of high-contact surfaces between services. Based on all of the above factors it is clear that churches generally present a much less likely source of interactions (contacts) that could spread the virus. Considering this factor alone, I believe it would be prudent to allow churches to meet in person in their facilities in the immediate future, as this action is not likely at all to increase the potential of an upsurge of the spread of COVID-19, but it would proliferate the feeling of goodwill in our communities since a full 69% of the California population are members of a church (even if all do not attend).



Governor Newsom, I believe that the foregoing is enough to demonstrate that the opening of churches for in person services in their facilities would be appropriate at this time. In fact, even our County Health Officer has recently opened up to allow for in person graduation ceremonies for groups of 25 or less (the size of quite a number of churches)ⁱⁱⁱ. I believe that restrictions on churches which have First Amendment protections should be no greater than on these other like gatherings. Churches should be able to open for in person gatherings with appropriate controls in place. I have taken time to pray for you during this critical time, for the decisions you make have far-reaching effects on our communities, including the people I am privileged to pastor.

While we believe that what is stated above is enough to convince you that the opening of churches is appropriate at this time, I am including additional considerations below as well.

LEGAL LIMITS OF THE EMERGENCY SERVICES ACT

As you are certainly aware, the Emergency Services Act, and the California Code that stems from it, gives the Governor very broad powers in the case of a bona fide emergency, including epidemic situations. Section 8567 specifically states, *"The Governor may make, amend, and rescind orders and regulations necessary to carry out the provisions of this chapter. The orders and regulations shall have the force and effect of law."* Appropriations are part and parcel with that provision as well, and if warranted, even the commandeering of both public and private resources, as needed, to provide for the public welfare in the case of a state of emergency or state of war emergency. The Governor can even declare martial law if it is found that cities, counties, etc. are in a state of insurrection. It is quite sweeping.

Yet the Acts is not without its limits. Even the section allowing for the declaration of martial law (§8574) clearly includes the essence of said limitations: *"the powers vested in the Governor under the Constitution or statutes of the state...."* Governor Newsom, the powers you have under the Emergency Services Act do not grant the Governor of California authority to suspend the Constitution of the State of California, nor the Constitution of the United States of America, which is invoked within the State Constitution as being *"the supreme law of the land."*^{iv} Your ability to wield the power of the *Emergency Services Act* appears to end where our Constitutional rights (Federal and State) begin. While such points are certainly debatable in a court of law, and while courts have landed on both sides of this issue to some extent, the language and intent seems to be clear enough.



Under the Code, the Governor is *"the person upon whom the powers and duties of the office of Governor have devolved pursuant to Section 10 of Article V of the California Constitution."* The powers of the office are conferred by the Constitution you swore to uphold and defend, and do not extend beyond the Constitutional limits, even in a state of emergency.

Section 8627 of the Code again states the limitation: *"During a state of emergency the Governor shall, to the extent he deems necessary, have complete authority over all agencies of the state government and the right to exercise within the area designated all police power vested in the state by the Constitution and laws of the State of California in order to effectuate the purposes of this chapter. In exercise thereof, he shall promulgate, issue, and enforce such orders and regulations as he deems necessary, in accordance with the provisions of Section 8567."*

I have consulted with constitutional attorneys on this matter, and they have generally agreed that, while the Emergency Services Act gives broad and sweeping powers to the Governor in the state of emergency, it does not allow for the suspension of Constitutionally-protected freedoms, some of which are actually even spelled out in the Act. The First Amendment to the US Constitution specifically forbids the creation of laws that prohibit the free exercise of religion or abridging the right of the people to assemble peacefully. Your Orders, relative to the present pandemic situation, have created laws that do both, and are therefore, in our estimation, null and void, at least to the extent they infringe on these protected rights.

Most pastors I know have willingly complied with both your Orders and those of the local municipalities in which they reside in an effort to help the cause of keeping a very contagious virus from spreading—but we also see both a lack of science or conflicting science relative to the virus, as well as protocols for counting positive cases and mortality that are not in keeping either with sound science or honesty. With my background, these anomalies are even more evident than to most of my ministerial counterparts. Some counties, such as several Bay Area counties, went well beyond your order and required the public to wear face coverings when in public, even though there is sound science from Public Health universities and organizations (brought to their attention last month) demonstrating that such a requirement is actually counter-productive to the stated goal of curbing transmission of the virus^y. It leaves one wondering what the underlying motive is.



THE US CONSTITUTION AND “STRICT SCRUTINY”

The United States Courts have applied a “strict scrutiny” standard to any consideration of infringement of fundamental constitutional rights, particularly those found in the Bill of Rights. In this case our concern is regarding our rights to freedom of religion—specifically prohibiting the free exercise of our religion, which calls for assembling together and interactions necessary for ministry— and interference with the right to peaceably assemble. The term “church” in our English Bibles derives from the original Greek word, *ecclesia*, which literally means “a people called out to assemble at a place.”

To pass strict scrutiny, the law or policy must satisfy three tests: 1) It must be justified by a compelling governmental interest; 2) The law or policy must be narrowly tailored to achieve that goal or interest; and 3) The law or policy must be the least restrictive means for achieving that interest.

It is my contention that, based on the existing science, and the conditions prevailing in our society and in the majority of church or religious assemblies, the present Orders on both a State and local level do not satisfy any of those three tests. This contention is shared by several constitutional attorneys, including within the great State of California. Under Emergency Services provisions, you may indeed temporarily suspend “*any statute, ordinance, regulation, or rule*,”^{vi} but you cannot, sir, suspend the protections of our State and Federal Constitutions.

CLOSING

In closing, I and many pastors believe that we have inviolable Constitutional protections allowing us to assemble, and to minister and conduct services as we see fit in accordance with our doctrines, while doing our best to comply with appropriate steps to ensure the limiting of potential for such a virus to spread within our gatherings. Several talented constitutional attorneys agree. We believe that the present orders are a violation of those protections, yet we have complied with orders temporarily for the sake of demonstrating goodwill within our communities. Still, we are seeing the genuine needs of our congregants are not being met which tend to their overall spiritual, mental, emotional and physical well-being. We feel that we **MUST** meet, in person, as we see fit, while taking appropriate measures to prevent the potential spread of the virus in our midst.

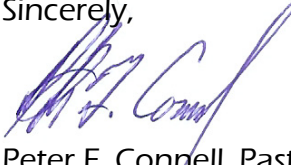


This letter is an appeal for you to take the points brought out in this correspondence into consideration; to seek competent counsel that is not ideologically based; and to remove the restrictions on churches and religious groups to congregate in accordance with their ecclesiastical beliefs. It is an appeal for you to do so in a timely and public manner.

It is my intention to follow up with you and your staff regarding this correspondence in the very near future, to see that it is being actively considered so that I may decide on how to proceed in the near future.

I thank you and your staff for taking the time.

Sincerely,



Peter F. Connell, Pastor

Cc: Brad Dacus, Esq., President, Pacific Justice Institute
Matthew McReynolds, Esq., Pacific Justice Institute
Chris Farnitano, MD, Health Officer, Contra Costa County
Brian Montgomery, City Manager, City of Oakley
Eric Christensen, Chief of Police, City of Oakley

ⁱ <https://www.christianitytoday.com/news/2019/march/lifeway-research-church-growth-attendance-size.html>, Accessed 5/18/2020.

ⁱⁱ Based on \$182M per store ave. in 2019, and average purchase amount per customer transaction. <https://www.statista.com/statistics/269775/costcos-average-sales-per-warehouse-worldwide/>, accessed 5/18/2020 and <https://expandedramblings.com/index.php/costco-statistics/>, accessed 5/18/2020.

ⁱⁱⁱ https://813dcad3-2b07-4f3f-a25e-23c48c566922.filesusr.com/ugd/84606e_021b0c7a1122422e9486a3c5aca6bf8f.pdf, accessed 5/19/2020.

^{iv} Article III, Section 1 of the California Constitution

^v cidrap.umn.edu/news-perspective/2020/04/commentary-masks-all-covid-19-not-based-sound-data, and <https://www.printfriendly.com/p/g/qrYrD9>, accessed 5 21 20, and, MacIntyre CR, Seale H, Dung TC, et al, A cluster randomised trial of cloth masks compared with medical masks in healthcare workers. *BMJ Open* 2015;5:e006577. doi: 10.1136/bmjopen-2014-006577, and, <https://bmjopen.bmj.com/content/5/4/e006577.responses#COVID-19-shortages-of-masks-and-the-use-of-cloth-masks-as-a-last-resort>, Accessed April 20, 2020.

^{vi} Section 8627.5 of the California Government Code



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