

Dear Mr. Broyles,

I am in receipt of your email and prior correspondence. You have made your client's position abundantly clear. That is, Cross Culture Christian Center (CCCC) does not believe the Orders issued by the Governor of the State of California or the San Joaquin County Public Health Services (PHS) Officer apply to the assembly activities of CCCC. We disagree. These Orders are content neutral and narrowly tailored to address conduct rather than expressive activity and the Orders are being equally enforced against religious and nonreligious activities in order to protect the health and safety of the citizens of Lodi. While I do not intend to get into an argument of applicable constitutional law, I will call your attention to *Employment Division, Dept. of Human Resources of Oregon v. Smith* (1990) 494 U.S. 872. (Justice Scalia, pointed out that the Court has "... never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate. On the contrary the record of more than a century of our free exercise of jurisprudence contradicts that proposition." *Smith*, 494 U.S. at 878-879.)

With regard to your First Amendment argument, two trial courts have rejected similar challenges to COVID-19 related orders. See *Nigen v. New York*, No. 1:20-cv-01576-EK-PK, ECF No. 7 (E.D.N.Y. March 29, 2020) (denying a request for a temporary restraining order) and *Binford v. Sununu*, No. 217-2020-CV-00152 (N.H. Super. Ct. March 25, 2020) (denying a preliminary injunction).

The Orders of the Governor and the PHS Officer were lawfully issued under the authority of the Constitution of the State of California and California Health and Safety Code, in light of the significant public health risk posed by Coronavirus (COVID-19). The Orders specifically recognize that faith based services provided through streaming and other technology are permitted. Your client's ability to worship has not been denied and has in fact been recognized by the Orders as an essential activity.

Yesterday the property leased by CCCC from Bethel Open Bible Church was posted with an Order Prohibiting Public Assembly issued by Maggie Parks, M.D., in her capacity as the San Joaquin County Public Health Officer. The Order prohibits public assembly at the property located at 760 South Ham Lane, including the parking lot (but excluding Bethel's day care, that is providing service to essential service workers). Any person who refuses or willfully neglects to comply with Dr. Parks' emergency order is guilty of a misdemeanor, punishable by fine and/or imprisonment. (See Gov. Code §8665 and Health & Safety Code §120275.) In addition, there are civil and administrative penalties that can be imposed. A copy of Dr. Parks' order is attached for your reference.

The record is abundantly clear that COVID-19 spreads easily in assembly occupancies. That risk applies to secular and religious assemblies alike, ranging from a chorale group in Washington State to a Slavic Church assembly less than thirty miles from Lodi. In both cases, no one was reportedly ill before the assemblies commenced. I trust you and your client will not disregard the consequences of continued assemblage in light of the facts.

The City intends to view any violation of any provision of the Orders, including Dr. Parks' Order Prohibiting Public Assembly at the Bethel Church property, to constitute a menace to public health; a

public nuisance; and an imminent threat to human life. Failure to comply will be deemed evidence of a conscious regard for human life.

We respectfully request that Cross Culture Christian Center abide by the Orders and the emergency order issued by Dr. Parks in order to protect not only CCCC's congregation, but also the community at large.