IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

COUNTY OF LOS ANGELES et al., Petitioners, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; GRACE COMMUNITY CHURCH OF THE VALLEY et al., Real Parties in Interest.	B307056 (Super. Ct. No. 20STCV30695) **O R D E R**

COURT OF APPEAL – SECOND DIST.
FILED
ELECTRONICALLY
Aug 15, 2020
DANIEL P. POTTER, Clerk
Dan Potter Deputy Clerk

THE COURT:

Late last night, the County of Los Angeles and its Health Officer (collectively, the County) filed a petition for a writ of mandate, as well as a request for immediate relief, to override the trial court's order to the extent it denied the County the to right to enforce that portion of its July 18, 2020 Health Order prohibiting "indoor religious services." The reason immediate relief was required is because tomorrow morning real party in interest Grace

Community Church of the Valley and its pastor, John MacArthur (collectively, the Church) intends to go forward with such religious services.

The questions presented in the County's writ petition are easy to articulate: May the County enforce the portion of its Health Order prohibiting "indoor religious services" as a means of limiting the spread of COVID-19? Nested within this question is another: Does the prohibition on "indoor religious services" infringe upon the constitutional right of the Church (and its parishioners) to the free exercise of their religion? Definitively resolving these questions, however, will entail the resolution of difficult questions of law. We certainly cannot resolve them before tomorrow morning's church services.

"Where, as here, difficult questions of law are involved and the fruits of a reversal would be irrevocably lost unless the status quo is mandated, justice requires that an appellate court issue a stay order to preserve its own jurisdiction . . . while it prepares . . . to rule on th[e] merits" of those questions. (*People ex rel. San Francisco Bay Conservation & Development Comm. v. Emeryville* (1968) 69 Cal.2d 533, 536-537; Code Civ. Proc., § 923.)

In deciding whether "justice requires" such a temporary stay, we will look to the traditional factors bearing on the propriety of preliminary injunctive relief: "(1) the likelihood that the moving party [here, the County] will prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the [stay]." (*Butt v. State of California* (1992) 4 Cal.4th 668, 677-678.) These factors are poles of a single continuum: "[T]he greater the plaintiff[-County's] showing on one, the less must be shown on the other to support a [stay.]" (*Id.* at p. 678.)

At this very preliminary stage in this litigation, the County has demonstrated a likelihood that it will prevail on the merits of enforcing its

July 18, 2020 Health Order. The County's Health Order is presumed to be constitutional unless its "unconstitutionality clearly, positively and unmistakably appears." (*In re Dennis M.* (1969) 70 Cal.2d 444, 453; *Associated Home Builders, Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 604-605.) Given the preliminary state of the evidentiary record as well as the weight of precedent favoring the enforcement of COVID-19-related restrictions (e.g., *South Bay United Pentecostal Church v. Newsom* (2020) __ U.S. __ [140 S. Ct. 1613] [denying injunction that would prohibit enforcement of health order against indoor religious services]; *Calvary Chapel Dayton Valley v. Sisolak* (2020) __ U.S. __ [2020 U.S. LEXIS 3584, *1] [same, as to order limiting attendance at indoor religious services]; *Gish v. Newsom* (C.D. Cal. Apr. 23, 2020, EDCV 20-755) [2020 U.S. Dist. LEXIS 74741, *13-*20] [denying injunction against statewide order prohibiting indoor religious services]; *Cross Culture Christian Center v. Newsom* (E.D. Cal. May 4, 2020, 2:20-CV-00832) [2020 U.S. Dist. LEXIS 79155] [same]; see generally, *Jacobson v. Massachusetts* (1905) 197 U.S. 11, 27-31 [noting that "a community has the right to protect itself against an epidemic of disease which threatens the safety of its members" unless its laws are in "palpable conflict with the Constitution"]), the presumption that the Health Order's "indoor religious services" provision is valid has yet to be rebutted.

At this stage, the "relative interim harm to the parties" also favors issuance of a stay. Consistent with the presumption of constitutionality that attaches to public laws, the status quo is that the County is empowered to enforce the "indoor religious services" provision of its Health Order. Were we to issue a stay of the trial court's order denying the County its power to enforce the provision, the Church would be denied the right to conduct its services *indoors*, but would be able conduct them *outdoors*. Were we to not

issue a stay of the trial court's order, the County would be barred from enforcing that provision and the Church would be able to conduct its services *indoors*, even though indoor church services have been a "source of outbreak" of COVID-19 due to the heightened risk of transmission when people are "in close proximity to one another for extended periods of time" and they are "singing, shouting and chanting," risks that "physical distanc[ing] and wearing a mask" "do not eliminate." As between the harm that flows from the heightened risk of transmitting COVID-19 (namely, "serious illness and death") and the harm that flows from having to conduct religious services outdoors instead of indoors, the balance at this early stage favors issuance of a stay.

For these reasons, we issue a stay of that portion of the trial court's order denying the County the right to enforce the Health Order's ban on "indoor religious activity" pending our final resolution of the County's petition for a writ of mandate or prohibition. We order the Church to provide a formal response to the County's petition on or before August 25, 2020. The trial court's previously scheduled hearing for a preliminary injunction, set for September 4, 2020, should go forward.

Lui Chavez Hoffstadt

LUI, P.J. CHAVEZ, J. HOFFSTADT, J.