

1 AARON D. FORD
Attorney General
2 CRAIG A. NEWBY (Bar No. 8591)
Deputy Solicitor General
3 State of Nevada
Office of the Attorney General
4 555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
5 (702) 486-3420 (phone)
6 (702) 486-3768 (fax)
Email: CNewby@ag.nv.gov

7 *Attorneys for State Defendants*

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10
11 CALVARY CHAPEL DAYTON VALLEY

12 Plaintiff,

13 vs.

14 STEVE SISOLAK, in his official capacity
as Governor of Nevada, et al.,

15 Defendants.
16

Case No. 3:20-cv-00303-RFB-VCF

**DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION AND
MEMORANDUM IN SUPPORT OF AN
INJUNCTION PENDING APPEAL**

17 Pursuant to this Court's minute order (ECF No. 48), Defendants Steve Sisolak, in
18 his official capacity as the Governor of Nevada and Aaron D. Ford, in his official capacity
19 as Attorney General of Nevada (collectively "Defendants") hereby submit the following
20 opposition to Plaintiff Calvary Chapel Dayton Valley's ("Plaintiff" or "Calvary") June 15,
21 2020 "Motion and Memorandum in Support of an Injunction Pending Appeal" (the
22 "Motion"). ECF No. 47.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 This response is made and based upon all matters of record herein, the
2 Memorandum of Points and Authorities submitted herewith, and upon such oral
3 arguments as the court may allow at the time of hearing of this matter

4 DATED this 17th day of June, 2020.

5 AARON D. FORD
6 Attorney General

7 By: /s/ Craig A. Newby
8 CRAIG A. NEWBY (Bar No. 8591)
9 Deputy Solicitor General
10 State of Nevada
11 Office of the Attorney General
12 555 E. Washington Avenue, Suite 3900
13 Las Vegas, NV 89101
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This court previously denied Calvary’s motion for a preliminary injunction, following
4 full briefing and argument.¹ ECF No. 46. Nothing set forth in this motion warrants this
5 court changing its earlier order denying injunctive relief.

6 **II. STANDARD OF REVIEW**

7 Ordinarily, the filing of a notice of appeal divests a district court of jurisdiction over
8 the matters being appealed. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58
9 (1982) (per curiam). Federal Rule of Civil Procedure 62(c) codifies an exception to this basic
10 principle: it allows a district court to “suspend, modify, restore, or grant an injunction on
11 terms for bond or other terms that secure the opposing party's rights” while an appeal is
12 pending. Fed. R. Civ. P. 62; *Nat. Res. Def. Council, Inc. v. Sw. Marine, Inc.*, 242 F.3d 1163,
13 1166 (9th Cir. 2001) (recognizing that a district court “retains jurisdiction during the
14 pendency of an appeal to act to preserve the status quo”).

15 “Rule 62(c) does not restore jurisdiction to the district court to adjudicate anew the
16 merits of the case,” and the “district court's exercise of jurisdiction should not *materially*
17 *alter the status of the case on appeal.*” *Mayweathers v. Newland*, 258 F.3d 930, 935 (9th
18 Cir. 2001) (emphasis added). District courts consider four factors in ruling on Rule 62(c)
19 motions: “(1) whether the stay applicant has made a strong showing that he is likely to
20 succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay;
21 (3) whether issuance of the stay will substantially injure the other parties interested in the
22 proceeding; and (4) where the public interest lies.” *Hilton v. Braunskill*, 481 U.S. 770, 776
23 (1987).²

24
25 1 Defendants incorporate by reference their prior briefing on the original motion.

26 2 Similarly, this court’s determination is entitled to deference by the Ninth Circuit,
27 which reviews a district court's decision denying a request for a preliminary injunction for
28 abuse of discretion. *Earth Island Inst. v. Carlton*, 626 F.3d 462, 468 (9th Cir.2010). “A
district court abuses its discretion if in denying [such] a request ... it bases its decision on
an erroneous legal standard or clearly erroneous findings of fact.” *Id.* Thus, the Ninth
Circuit's review is “limited and deferential.” *Id.*

1 Here, for the reasons set forth by this court in its order denying Calvary's motion for
2 preliminary injunction, Calvary will not be able to meet this standard for obtaining an
3 injunction pending appeal.

4 **III. LEGAL ANALYSIS**

5 *First*, Calvary has not made a showing that they are likely to succeed on the merits,
6 much less a *strong showing* that they are likely to succeed on the merits. As set forth in
7 the court's order, Nevada's emergency directives are neutral and generally applicable, such
8 that they do not burden Calvary's First Amendment right to free exercise. ECF No. 43 at
9 8:1. Certain secular activities comparable to in-person church services are subject to more
10 stringent restrictions, such that there is not an attempt to specifically target places of
11 worship. *Id.* at 7:17-24. There is no evidence in this record indicating selective enforcement
12 of Nevada's emergency directives against Calvary specifically or houses of worship more
13 generally.

14 *Second*, Calvary seeks to materially alter the status of the case on appeal by
15 obtaining an injunction, in contradiction to the *Mayweathers* standard. Calvary has the
16 right to appeal this court's order, subject to the appropriate standard of review. However,
17 it does not have the right to alter the status quo, which remains that the Nevada emergency
18 directives are valid and enforceable during this public health emergency.

19 *Third*, Calvary, given it cannot demonstrate a strong likelihood of success on the
20 merits, cannot show that it has suffered irreparable harm. As noted in prior briefing,
21 Calvary is already allowed to conduct in-person church services for up to 50 people a
22 service, while continuing virtual services. Simply doubling the number of existing church
23 services would allow Calvary to conduct in-person church services for its entire
24 congregation. Particularly where these mass gathering requirements are generally
25 applicable, there is no factual basis for concluding that Calvary has or will suffer
26 irreparable harm.

27 *Fourth*, granting the injunction will substantially injure Nevada and its citizens
28 during this public health emergency. Here, Calvary presumes it should be treated the same

1 as a business operating in commerce, ignoring the difference between commerce and mass
2 gatherings for purposes of COVID-19 risk. The Supreme Court and the Ninth Circuit have
3 rejected ignoring these differences. In contrast, the Governor has an obligation to protect
4 Nevadans' health and well-being, based on the risk during a once-a-century pandemic.
5 Consistent with White House guidelines for mass gatherings, the Governor has
6 implemented directives to slowly reopen Nevada to ensure the curve stays flat and that
7 there is not a need to revert back to earlier phases that required further sacrifices from all
8 Nevadans to remain safe.

9 Under such circumstances, the public interest and the harms to Nevada weigh
10 against awarding Calvary injunctive relief.

11 **IV. CONCLUSION**

12 Calvary's motion for injunction pending appeal should be summarily denied.

13 Dated: June 17th, 2020.

14 AARON D. FORD
15 Attorney General

16 By: /s/ Craig A. Newby
17 CRAIG A. NEWBY (Bar No. 8591)
18 Deputy Solicitor General
19 State of Nevada
20 Office of the Attorney General
21 555 E. Washington Avenue, Suite 3900
22 Las Vegas, NV 89101
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 17th day of June, 2020, I electronically filed the foregoing document, **DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION AND MEMORANDUM IN SUPPORT OF AN INJUNCTION PENDING APPEAL**, with the Clerk of the Court by using the CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/ Kristalei Wolfe
Kristalei Wolfe
State of Nevada,
Office of the Attorney General