

No. 25-703

IN THE
Supreme Court of the United States

CALVARY CHAPEL SAN JOSE, ET AL.,

Petitioners,

V.

CALIFORNIA, ET AL.,

Respondents.

On Petition for Writ of Certiorari
to the California Court of Appeal, Sixth Appellate
District

**Brief of the Liberty Justice Center as
Amicus Curiae Supporting Petitioners**

Jeffrey Schwab
Counsel of Record
Reilly Stephens
Jessica Craine
LIBERTY JUSTICE CENTER
7500 Rialto Blvd.
Suite 1-250
Austin, Texas 78735
512-481-4400
jschwab@ljc.org

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Counsel for Amicus Curiae

Questions Presented

1. Do COVID restrictions that contain multiple exceptions, exceptions permitting comparable risks of viral transmission, trigger strict scrutiny under *Employment Division v. Smith*, 494 U.S. 872 (1990), because they are not “generally applicable”?
2. Should this Court hold that the church autonomy doctrine, which provides an exception to *Smith*, includes not just a “ministerial exception” but also a “liturgical exception”?
3. If *Smith* does *not* require strict scrutiny in this case and does *not* include a liturgical exception, but instead allows governments to micromanage religious services, should this Court overrule *Smith* as incompatible with a proper reading of the Free Exercise Clause?
4. Is the imposition of over a million dollars in fines on a church for its adherence to its religious requirements for worship services a violation of the Excessive Fines Clause of the Eighth Amendment?

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Interest of the Amicus Curiae

Liberty Justice Center (LJC) is a nonprofit, nonpartisan public-interest litigation firm that pursues strategic, precedent-setting litigation aimed at revitalizing constitutional restraints on government power and protecting individual rights. LJC is interested in this case because fines imposed for unconstitutional regulations violate the constitutional rights of Americans and excessive fines not only violate the Eighth Amendment rights of Americans, they also allow the government to threaten other constitutional rights.¹

LJC has worked to protect the rights of Americans against various types of overreach related to the COVID-19 pandemic. For example, it fought for the First Amendment rights of Americans to gather to worship and engage in political activity. *See Illinois Republican Party v. Pritzker*, 1:20-cv-03489 (N.D. Ill.); *Illinois Right to Life Comm. v. Pritzker*, 1:20-cv-03675 (N.D. Ill.).

It also fought to protect the First Amendment rights of doctors posed by California Assembly Bill 2098, *see McDonald v. Lawson*, 94 F.4th 864 (9th Cir. 2024), and of a journalist who asked a governor hard questions during the pandemic, *see Salem Media of Illinois v. Pritzker*, 1:20-cv-03212 (N.D. Ill.). And LJC fought against government overreach by the federal

¹ Rule 37 statement: No counsel for any party authored any part of this brief, and no person or entity other than Amicus funded its preparation or submission. All parties received timely notice of Amicus's intent to file this brief.

government through the vaccine mandate. *BST Holdings, LLC v. DOL, OSHA*, 142 S. Ct. 891 (2022).

LJC has also filed amicus briefs on issues related to overreach during the COVID-19 pandemic. For example, LJC argued against the Fifth Amendment violations of Americans rights posed by the eviction moratorium. *GHP Mgmt. Corp. v. City of L.A.*, 145 S. Ct. 2615, 2617 (2025).

Summary of Argument

The California appellate court found Santa Clara’s COVID restrictions imposed on Petitioner to be unconstitutional, and in violation of this Court’s rulings. Nevertheless, the county still punished the church for holding worship services by imposing over a million dollars in fines, which the appellate court allowed.

The decision in this case is easy, but necessary. Santa Clara county’s COVID restrictions were unconstitutional. It cannot impose fines for alleged violations of unconstitutional regulations. This Court should grant the petition, and clarify that allowing the government to impose fines on people for violating unconstitutional laws or regulations undermines those constitutional protections.

Even if the ordinances in this case were constitutional, the fines imposed here were in fact unconstitutionally excessive—among the highest possible allowed and were the same or higher than those for worse offenses, such as the improper storage of hazardous materials. Such fines violate the Excessive Fines Clause of the Eighth Amendment.

This Court should grant review to make clear that the government cannot restrict the rights of citizens and evade judicial review by fining them for violations of unconstitutional regulations, regardless of whether there is a pandemic.

Argument

I. California used the COVID-19 pandemic as an excuse to abridge the freedoms of Americans.

The COVID-19 pandemic saw governments of all sizes—federal, state, and local—attempts to abridge the freedoms of Americans.

The state of California attempted to abridge the First Amendment rights of doctors by punishing them for sharing “misinformation” about COVID-19. *See McDonald v. Lawson*, 94 F.4th 864 (9th Cir. 2024). And the governor of Illinois attempted to silence a journalist for asking hard questions during the pandemic. *See Salem Media of Illinois v. Pritzker*, 1:20-cv-03212 (N.D. Ill.). Meanwhile, the federal government attempted to violate the Fifth Amendment rights of Americans by taking their property without just compensation under the eviction moratorium. *See Ala. Ass’n of Realtors v. HHS*, 594 U.S. 758 (2021). It also overreached its authority by attempting to use the Occupational Health and Safety Act (OSHA) to mandate the COVID-19 vaccine. *See Nat’l Fed’n of Indep. Bus. (NFIB) v. DOL, OSHA*, 595 U.S. 109 (2022) and *BST Holdings, LLC v. DOL, OSHA*, 142 S. Ct. 891 (2022).

Local governments also violated Americans' rights by requiring vaccine passports to engage in daily life. *See Connolly v. Lightfoot*, 1:20-cv-00745 (N.D. Ill.). These jurisdictions failed to realize that "even in a pandemic, the Constitution cannot be put away and forgotten." *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (*per curiam*). The purpose of the Constitution is to protect rights in exactly such circumstances. This Court should grant the petition to make clear the Constitution applies at all times, even in emergencies.

A. This is also another instance of a lower court not following this Court's First Amendment jurisprudence regarding COVID restrictions.

This Court has repeatedly intervened regarding California COVID restrictions, in particular, to declare them unconstitutional because lower courts did not appropriately do so. *See Tandon v. Newsom*, 593 U.S. 61, 64 (2021) (*per curiam*) ("This is the fifth time the Court has summarily rejected the Ninth Circuit's analysis of California's COVID restrictions on religious exercise.") (citing *Harvest Rock Church v. Newsom*, 141 S. Ct. 889 (2020); *South Bay United Pentecostal Church v. Newsom*, 141 S. Ct. 716, 718 (2021); *Gish v. Newsom*, 141 S. Ct. 1290 (2021); *Gateway City Church v. Newsom*, 141 S. Ct. 1460 (2021)).

The case at bar unfortunately represents yet another instance for this court to make clear the protections provided by the Constitution. To do not so would allow Santa Clara County to fine a church for exercising their First Amendment right to the free

exercise of their religion. But “[g]overnment is not free to disregard the First Amendment in times of crisis.” *Roman Catholic Diocese*, 592 U.S. at 21 (GORSUCH, J. concurring). And “in the end, it is always the failure to defend the Constitution’s promises that leads to this Court’s greatest regrets.” *Dr. A. v. Hochul*, 142 S. Ct. 552, 559 (2021) (GORSUCH, J. dissenting).

This Court should grant the petition to reinforce that the government cannot fine citizens for violations of unconstitutional regulations. “An unconstitutional law is void, and is as no law. An offence created by it is not a crime. A conviction under it is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment.” *Ex parte Siebold*, 100 U.S. 371, 376–77 (1879). So too, an unconstitutional ordinance cannot be a legal basis for a fine. In order to fine, the government must first have a legitimate offense to punish. But here, Santa Clara County has no legitimate offense to punish. Instead, it has charged a fine against Calvary Chapel based on an unconstitutional regulation that violated its First Amendment free exercise rights.

B. Santa Clara’s regulations allowed for comparable secular activities that posed the same risk.

This Court has made clear how courts must determine the First Amendment constitutionality of regulations. “[G]overnment regulations are not neutral and generally applicable . . . whenever they treat *any* comparable secular activity more favorably than religious exercise.” *Tandon*, 593 U.S. at 62 (per curiam) (citing *Roman Catholic Diocese*, 592 U.S. at 67 (per curiam) (emphasis in original)). Further,

“whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue,” and courts consider “the risks various activities pose, not the reasons why people gather.” *Id.* (citing *Roman Catholic Diocese*, 592 U.S. at 67).

The California 6th District Court of Appeals previously held that an “November 2, 2020 temporary restraining order that enjoined Calvary Chapel from holding any indoor gathering that did not comply with the capacity limitations of 100 people or 25 percent of capacity [was] unconstitutional because it discriminate[d] against a religious institution in violation of the free exercise clause of the First Amendment and the County [had] not satisfied its burden to show that the underlying health order satisfie[d] strict scrutiny.” *People v. Calvary Chapel San Jose*, 298 Cal. Rptr. 3d 262, 277 (2022). The court based its finding on the decisions of this Court holding similar COVID restrictions unconstitutional. The court also found it “need not determine whether the November 2, 2020 temporary restraining order [was] unconstitutional with respect to the health order's restrictions on indoor singing and requirements for face coverings, social distancing, and submission of a social distancing protocol.” *Id.* at 277–78.

In the decision below, however, the California 6th District Court of Appeals found that no “triable questions of fact exist[ed] as to whether the face covering requirements in the revised risk reduction order and the safety measures order were neutral and of general applicability,” because “Calvary Chapel [had] not shown that [exempted] secular activities

were comparable to the church activities that subjected Calvary Chapel to fines for violating the face covering requirements,” so the court “need not determine if the face covering requirements survive strict scrutiny.” *People v. Calvary Chapter of San Jose*, No. H051860, 2025 LX 55347, at *49 and *52 (Cal. Ct. App. Apr. 15, 2025).

But the restrictions in this case included multiple exemptions for comparable activities, which this Court has repeatedly warned would make applicability of the regulations placed upon religious exercise unconstitutional. See *Tandon*, 593 U.S. 61 (*per curiam*); *Roman Catholic Diocese*, 592 U.S. 14; *Harvest Rock Church*, 141 S. Ct. 889; *South Bay United Pentecostal Church*, 141 S. Ct. 716; *Gish*, 141 S. Ct. 1290; *Gateway City Church*, 141 S. Ct. 1460.

Calvary Chapel was ordered to “[r]equire all attendees and congregants to wear face coverings while attending gatherings or while indoors in a space open to the public” and “[r]equire all personnel to wear face coverings while attending gatherings or while indoors in a space open to the public.” *Calvary Chapter*, 2025 LX 55347, at *49–50.

The government interest in this case was stopping or slowing the spread of COVID-19. The risk of the spread of infection in Calvary Chapel seems to be based on the number of individuals in an indoor space. But there were multiple exceptions to such regulations provided for comparable secular activities.

For example, there were exceptions for customers at restaurants “once their food or drinks have been served,” who could leave masks “off until they finish

their meal, so long as they are not interacting with a server or other staff and remain seated at their table.” *Id.* Restaurants are generally indoor gatherings of large numbers of people. And people eat for the majority of the time they are in a restaurant, meaning they could remove their masks for most of the time they were indoors. So large, indoor gatherings of people were allowed during which most of the attendees were not wearing masks. The risk posed by patrons in restaurants therefore seems comparable to the risk posed by worshippers in a church. But the court below somehow disagreed, finding that people could eat in public, but could not worship in public.

There was also an exception for individuals “while receiving a personal care service indoors or outdoors that require removal of a face covering Clients must put their face covering back on as soon as they are able to, and must wear a face covering while waiting for their service, walking to and from the treatment area, visiting the restroom, and at all other times while at the facility.” *Id.* at *48. Again, here there are people meeting indoors who can remove their masks for the majority of their time indoors. But again, the court below found it was somehow not comparable to a religious service, finding people could get work done to their faces, but could not show their faces to God.

The court below brushed aside the exemptions for comparable secular activities by simply saying they were “very limited.” *Id.* at *49. It should, instead, have found there were comparable secular activities, shifting the burden to the government to justify their restriction. “[O]nce more, we appear to have a [government] playing favorites during a pandemic,

expending considerable effort to protect lucrative industries”—here restaurants and personal services—“while denying similar largesse to its faithful.” *South Bay*, 141 S. Ct. at 719 (statement of GORSUCH, J.).

C. The government was required to show Calvary Chapel’s religious activities were somehow dangerous.

It is the government that “has the burden to establish that the challenged law satisfies strict scrutiny” and “must show that the religious exercise at issue is more dangerous than those [other permitted] activities even when the same precautions are applied.” *Tandon*, 593 U.S. at 62–63.

The court below should have required Santa Clara County to show why the exempted secular activities were less dangerous than the religious activities conducted by Calvary Chapel. But Santa Clara did not have to “explain why it cannot address its legitimate concerns with rules short of a total ban.” *South Bay*, 141 S. Ct. at 718 (2021) (statement of GORSUCH, J.). Santa Clara should have had to show why churches were more dangerous than restaurants, even though large numbers of individuals gathered together indoors. By not doing so, the court below impermissibly shifted the burden to Calvary Chapel, rather than the government.

This Court should grant the petition to make clear that citizens are not responsible for showing their religious activities are permissible. Rather the government has the burden to show why a regulation of religious exercise is justified.

II. Even if the challenged regulations were constitutional, this Court should still hold that the government cannot use grossly disproportionate fines to undermine constitutional liberties.

Even if the COVID regulations in this case were constitutional, they still violated the Excessive Fines Clause because they were grossly disproportionate to the gravity of Calvary Chapel's alleged offense. In doing so, they also violated Calvary Chapel's right to practice its religion.

The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST., amend. VIII. The Excessive Fines Clause is incorporated against the States, being both "fundamental to our scheme of ordered liberty" and "deeply rooted in this Nation's history and tradition." *Timbs v. Indiana*, 586 U.S. 146, 149–50 (2019) (quoting *McDonald v. Chicago*, 561 U.S. 742, 767 (2010)).

The Excessive Fines Clause "limits the government's power to extract payments, whether in cash or in kind, as punishment for some offense." *Id.* at 151 (quoting *United States v. Bajakajian*, 524 U.S. 321, 327–28 (1998) (internal citations removed)). "The purpose of the Eighth Amendment . . . was to limit the government's power to punish." *Austin v. United States*, 509 U.S. 602, 609 (1993) (internal citation omitted). The reason for this is that "[e]xorbitant tolls undermine other constitutional liberties. Excessive fines can be used, for example, to retaliate against or

chill the speech of political enemies.” *Timbs*, 586 U.S. at 153. Or restrict the free exercise of religion.

“[T]he protection against excessive fines has been a constant shield throughout Anglo-American history.” *Id.* “The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality.” *Bajakajian*, 524 U.S. at 334. Hence, “[i]f the amount of the [fine] is grossly disproportional to the gravity of the defendant’s offense, it is unconstitutional.” *Id.* at 337.

The line between punishments that are “grossly disproportionate to the gravity of the defendant’s offense” and those that are not is “inherently imprecise.” *Cooper Indus. v. Leatherman Tool Grp., Inc.*, 532 U.S. 424, 434 (2001). This Court has “focused on the same general criteria” to determine when the line has been crossed. *Id.* at 435. Those criteria are: 1) “the degree of the defendant’s reprehensibility or culpability;” 2) “the relationship between the penalty and the harm to the victim caused by the defendant’s actions;” and 3) “the sanctions imposed in other cases for comparable misconduct.” *Id.* (internal citations removed).

Here, Calvary Chapel has been fined \$1,228,700 for “violating the public health orders requiring face coverings.” *Calvary Chapter*, 2025 LX 55347, at *60. The fines were for alleged violations occurring between November 9, 2020, and June 21, 2021. *Id.* at *59. Dividing the total fine amount by the number of days (225 days) leads to an average fine of approximately \$5,460 per day. This Court should hold that these fines are grossly disproportionate to the gravity of Calvary Chapel’s alleged offense.

A. Calvary Chapel was not reprehensible by continuing to worship.

Calvary Chapel was most certainly not reprehensible by continuing to worship. While it allegedly violated Santa Clara County's COVID restrictions, it did so to continue in the exercise of its religion according to its religious beliefs. It was not seeking personal benefit, like many violators do, but instead was seeking to worship according to its religion and support its parishioners in their religious practice. Calvary Chapel's lack of reprehensibility and low culpability warrant finding the fines grossly disproportionate.

B. Calvary Chapel caused minimal harm.

Additionally, no specific harm can be tied to Calvary Chapel's actions. The public health orders were intended to limit the spread of COVID by requiring face coverings. However, the orders allowed for many exceptions. *See id.* at *39–40. And no specific harms from Calvary Chapel's actions were alleged. So any incremental increase in harm by Calvary Chapel's action was likely minimal. The lack of harm caused by Calvary Chapel also warrants finding the fines grossly disproportionate.

C. Calvary Chapel's \$1.2 million-plus penalty is higher than the maximum sanctions for worse activities.

The total fine of \$1,228,700, or average of approximately \$5,460 per day, for Calvary Chapel is also much higher than other maximum sanctions imposed for worse activities.

The California Penal Code limits the punishment of misdemeanors to imprisonment for six months or a fine not exceeding \$1,000, or both, if a different punishment is not prescribed. CAL. PENAL CODE § 19 (Deering 2025). Santa Clara County Code similarly by default sets violations of its regulations as misdemeanors with the same penalty limits. SANTA CLARA, CAL., ORDINANCE CODE § A1-28. But the average daily fine it imposed on Calvary Chapel is over five times greater than the maximum penalty for misdemeanors.

The Santa Clara County Code states that, “[u]nless otherwise specified in this Code, the amount of the administrative fine per violation shall not exceed \$5,000.00 for each day that a violation exists. The total fine may exceed \$5,000.00 when multiple violations occur or when a continuing violation exists for multiple days.” SANTA CLARA, CAL., ORDINANCE CODE § A37-6. So Santa Clara County maxed out its administrative authority when fining Calvary Chapel.

But Santa Clara County does not similarly do so for worse violations. It only fines a maximum \$5000 per day for violations of its “hazardous materials storage” code provisions. SANTA CLARA, CAL., ORDINANCE CODE § B11-345. And it similarly limits fines to \$5000 per day for violations of its “toxic gas storage” code provisions. SANTA CLARA, CAL., ORDINANCE CODE § B11-400. Violations of the “public nuisance abatement” code provisions are also limited to penalties of \$5000 per day. SANTA CLARA, CAL., ORDINANCE CODE § A1-42.

It is inconceivable that by holding religious services for the free exercise of religion by its congregants, Calvary Chapel is as or more

reprehensible, more culpable, and more harmful, than individuals who improperly store hazard materials or toxic gas or who refuse to abate public nuisances. The fact that Calvary Chapel's fines were the same or higher than the maximum sanctions for such violations warrants finding the fines grossly disproportionate.

Comparison with state-level sanctions shows even greater disparities. The California Health and Safety Code includes punishments for violations related to communicable disease prevention and control. Violations of those regulations are misdemeanors, for which the maximum fine is \$1,000 per day. *See* CAL. HEALTH & SAFETY CODE §§ 120275, 120280, 120290, 120295 (Deering 2025). The daily average fine imposed on Calvary Chapel is over five times greater.

The California Occupational Safety and Health's (OSHA) Department of Industrial Relations (DIR) can implement civil penalties for employer violations of regulations. They cap the amount of penalties for willful and repeat health and safety violations at \$162,851. CAL. CODE REGS. tit. 8, § 336 (2025). The total fine imposed on Calvary Chapel is over seven and a half times greater.

It is clear that the sanctions imposed on Calvary Chapel were higher, and in some cases significantly higher, than even the maximum allowed for worse violations. This incredible disparity warrants finding the fines against Calvary Chapel grossly disproportionate, and thus violations of the Eighth Amendment prohibition against excessive fines. Such an exorbitant fine undermines the Constitution's protection of the free exercise of religion.

D. The progressive fine scheme used may also have been excessive.

This Court's guidance on excessive fines is limited. One question not yet addressed is whether progressive fine structures that increase over time are permissible or are grossly disproportionate.

In this case, the fine imposed on Calvary Chapel was based on a progressive fine scheme. Santa Clara County's original fine scheme started at \$250 per day for violations and "would double each day until corrected, to a maximum fine of \$5,000 per day." *Calvary Chapel*, 2025 LX 55347, at *7. The fines that serve the basis of the current petition were imposed later and were also progressive. Those fines were for "\$1,000 per day for failing to require the use of face coverings by clients, customers, and visitors when in an indoor space open to the public; and (2) \$1,000 per day for failing to require the use of face coverings by all personnel, including employees, owners, contractors, and volunteers at the facility." *Id.* at *10. Those fines "would begin accruing immediately and double each day until the face covering violations were corrected, up to a maximum of \$5,000 per day." *Id.* at *10–11.

This Court has explained that "the standard of gross disproportionality articulated in [this Court's] Cruel and Unusual Punishments Clause precedents guides" the analysis under the Excessive Fines Clause as well. *Bajakajian*, 524 U.S. at 336. (citing *Solem v. Helm*, 463 U.S. 277, 288 (1983); *Rummel v. Estelle*, 445 U.S. 263, 271 (1980)).

Under that standard, this Court has "repeatedly upheld recidivism statutes 'against contentions that

they violate constitutional strictures dealing with . . . cruel and unusual punishment . . .” *Parke v. Raley*, 506 U.S. 20, 27 (1992) (quoting *Spencer v. Texas*, 385 U.S. 554, 560 (1967) and also noting *Solem*, 463 U.S. 277).

In considering recidivist statutes, this Court has noted that their “primary goals are to deter repeat offenders and, at some point in the life of one who repeatedly commits criminal offenses serious enough to be punished as felonies, to segregate that person from the rest of society for an extended period of time.” *Rummel*, 445 U.S. at 284. They are based on the government’s interests both in criminalizing the underlying behavior and “in dealing in a harsher manner with those who by repeated criminal acts have shown that they are simply incapable of conforming to the norms of society as established by its criminal law.” *Id.* at 276.

Progressive fines schemes, which increase penalties over time, could be considered analogous to recidivist statutes. If someone continues to violate a law or regulation, the fine they receive—like a sentence they could receive—increases. This Court has not addressed the issue, though.

Even if progressive fine schemes are permissible, there likely are limits to how much of an increase is permissible before the fines become grossly disproportionate. This Court has long recognized “it is a precept of justice that punishment for crime should be graduated and proportioned to offense.” *Solem*, 463 U.S. at 287 (quoting *Weems v. United States*, 217 U.S. 349, 367 (1910)). When applying this, “a court’s proportionality analysis under the Eighth Amendment should be guided by objective criteria,

including (i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions.” *Solem*, 463 U.S. at 292.

This Court has held that “a State is justified in punishing a recidivist more severely than it punishes a first offender.” *Id.* at 296. And it has largely deferred to legislative decisions regarding the penalty appropriate for recidivism. *See Rummel*, 445 U.S. at 285 (“Like the line dividing felony theft from petty larceny, the point at which a recidivist will be deemed to have demonstrated the necessary propensities and the amount of time that the recidivist will be isolated from society are matters largely within the discretion of the punishing jurisdiction.”).

But this Court found a sentence of life imprisonment without the possibility of parole for a habitual offender violated the Eighth Amendment because the individual’s sentence was “significantly disproportionate to his crime.” *Solem*, 463 U.S. at 303. The holding was based on multiple factors: the individual 1) “received the penultimate sentence for relatively minor criminal conduct;” 2) was “treated more harshly than other criminals in the State who have committed more serious crimes;” and 3) was “treated more harshly than he would have been in any other jurisdiction, with the possible exception of a single State.” *Id.*

Those same factors should lead this Court to hold that the fines imposed on Calvary Chapel were significantly disproportionate to its alleged crime and thus violated the Eighth Amendment.

As discussed above, Calvary Chapel “received the [ultimate sentence for relatively minor conduct.” It was fined the highest set fine permitted for administrative fines and more than the highest fine allowed for misdemeanors.

Calvary Chapel was also “treated more harshly” than others “who have committed more serious” offenses. It was fined the same or more than those who inappropriately store hazardous materials and toxic gases and those who violate state Health and Safety Code or OSHA regulations.

It is unclear whether Calvary Chapel was “treated more harshly than [it] would have been in any other jurisdiction” as comprehensive data on fines related to COVID restrictions is not available. But review of federal penalties suggests Santa Clara County’s fines were particularly harsh. The Department of Homeland Security imposed penalties of “\$500-\$1000 for first offenders and \$1000-\$3000 for second offenders” of the federal mask mandate. National Press Release, U.S. Dep’t of Homeland Sec., DHS to Increase Civil Penalties for Violations of the Federal Mask Mandate (Sept. 9, 2021). Calvary Chapel’s fine per day was therefore over one and a half times that of the highest federal fine.

The U.S. Department of Labor’s Occupational Health and Safety Administration (OSHA) published data on inspections with COVID-related violations. U.S. Department of Labor, *Inspections with COVID-19 Related Violations* (Feb. 28, 2023), <https://www.osha.gov/enforcement/covid-19-data/inspections-covid-related-citations#:~:text=OSHA%20Coronavirus%2DRelated%20Inspections%20with,Total%20Current%20Penalt>

ies%20of%20\$7%2C904%2C710. The highest total initial penalty it gave was for \$273,064. *Id.* Calvary Chapel’s total fine was nearly four and a half times that of the highest federal OSHA penalty.

Even if progressive fine schemes in theory may be constitutional, this Court should hold that the fines imposed against Calvary Chapel were significantly disproportionate to its alleged crime and therefore violated the Eighth Amendment’s prohibition against excessive fines.

E. The excessive fines also threatened other of Calvary Chapel’s constitutional rights.

Allowing a government to use fines to force compliance with unconstitutional regulations raises numerous concerns. As this Court has highlighted, “[e]xorbitant tolls undermine other constitutional liberties. Excessive fines can be used, for example, to retaliate against or chill the speech of political enemies.” *Timbs*, 586 U.S. at 153. As demonstrated in this case, exorbitant fines can allow the government to control the religious activities of religious institutions.

The fines here were used to restrict the constitutional rights of Calvary Chapel and its parishioners. By not allowing them to worship according to their religious beliefs, Santa Clara County violated their First Amendment free exercise rights. It may have also impermissibly engaged in the control of the church’s liturgy and autonomy. These issues raise vital questions regarding the limits of government power when it comes to the affairs of religious entities, which also warrant this Court granting the petition.

Conclusion

The decisions below in this case, if left undisturbed, would undermine the protections that the Constitution provides against government overreach, even—or perhaps especially—during emergencies. The Constitution does not permit government officials to pressure compliance with unconstitutional regulations by imposing excessive fines. If a regulation is unconstitutional, it need not be followed. The government cannot scare you into doing so by excessively fining you if do not comply.

This Court should grant review to make clear to governments that they cannot force unconstitutional regulations on citizens and evade judicial review by fining them for refusing to comply. Not even during a pandemic.

Neither can they use excessive fines to force citizens to comply with regulations and threaten their constitutional rights. The shield of the Eighth Amendment's Excessive Fines Clause prevents it. And the Constitution applies even to COVID.

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Jeffrey Schwab
Counsel of Record
Reilly Stephens
Jessica Craine
LIBERTY JUSTICE CENTER
7500 Rialto Blvd., Suite 1-250
Austin, Texas 78735
512-481-4400
jschwab@ljc.org
Counsel for Amicus Curiae