UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 20-755 JGB (KKx)**	Date	October 9, 2020
Title	***Wendy Gish, et al. v. Gavin Newsom, et al.***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter

Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: Order (1) DENYING Plaintiffs' Motion for Reconsideration (Dkt. No. 79); and (2) VACATING the October 19, 2020 Hearing (IN CHAMBERS)

Before the Court is a Motion for Reconsideration of the Court's Order Granting Motions to Dismiss filed by Plaintiffs. ("Motion," Dkt. No. 79.) The Court finds the Motion appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. After considering the papers filed in support of and in opposition to the Motion, the Court DENIES the Motion. The Court vacates the hearing set for October 19, 2020.

I. FACTUAL BACKGROUND

On March 19, 2020, Governor Newsom issued Executive Order N-33-20, directing all Californians to "immediately heed the current State public health directives" to address the spread of Covid-19. (Dkt. No. 1-1.) The same day, the State issued public health directives which prohibited in-person religious services, including outdoor services. (See Complaint, Dkt. No. 1 ¶ 34; State Opposition, Dkt. No. 83 p. 2.) On April 6, 2020, Riverside County issued an order of its own to address the Covid-19 pandemic. (Dkt. No. 1-3.) The next day, San Bernardino County did the same. (Dkt. No. 1-2.)

On April 13, 2020, Plaintiffs filed their complaint, which challenged all three orders for the prohibition of in-person religious worship. ("Complaint," Dkt. No. 1.) The Complaint alleges eleven causes of action: (1) Violation of Free Exercise Clause of First Amendment to U.S. Constitution; (2) Violation of Establishment Clause of First Amendment to U.S. Constitution;

(3) Violation of Free Speech Clause of First Amendment to U.S. Constitution; (4) Violation of First Amendment Freedom of Assembly Clause; (5) Violation of Due Process Clause of Fourteenth Amendment to U.S. Constitution; (6) Violation of Due Process Clause of Fourteenth Amendment to U.S. Constitution; (7) Violation of Equal Protection Clause of Fourteenth Amendment to U.S. Constitution; (8) Right to Liberty (Cal. Const. Art. 1, § 1); (9) Freedom of Speech (Cal. Const. Art. 1, § 2); (10) Freedom of Assembly (Cal. Const. Art. 1, § 3); and (11) Free Exercise and Enjoyment of Religion (Cal. Const. Art. 1, § 4).

On April 23, 2020, the Court denied Plaintiffs' request for a temporary restraining order and preliminary injunction. ("TRO Order," Dkt. No. 51.) On July 8, 2020, the Court dismissed the case on mootness grounds but granted Plaintiffs leave to amend. ("Order," Dkt. No. 76.) In the Order, the Court directed that any amended complaint should be filed by July 31, 2020. (Dkt. No. 76.) On July 31, 2020, Plaintiffs filed a Notice of Intent to File a Motion for Reconsideration. (Dkt. No. 78.) On August 17, 2020, they filed this Motion. (Dkt. No. 79.) All groups of Defendants opposed separately: San Bernardino Defendants[1] opposed on September 10, 2020, (Dkt. No. 81); Riverside Defendants opposed on September 14, 2020, (Dkt. No. 82,); and State Defendants also opposed on September 14, 2020, ("State Opposition," Dkt. No. 83.) On September 21, 2020, Plaintiffs replied. (Dkt. No. 84.) On October 2, 2020, State Defendants filed a Notice of Supplemental Authority citing the Ninth Circuit opinion in Harvest Rock Church v. Newsom, 9th Cir. No. 20-55907. (Dkt. No. 85.)

In parallel to the developments in this case, the State of California continued to issue Covid-19 guidance. On May 25, the Department of Public Health issued guidelines for reopening places of worship. (State Opposition p. 2.) In addition to providing guidance on distancing, the guidelines limited attendance at worship services to either 100 attendees or 25% of a building's capacity, whichever is fewer. Id. On June 12, 2020, the State updated Department of Health guidance to remove any numerical attendance limit on outdoor in-person worship services. Id. at 3. On July 13, 2020, the State issued an order directing the closure of indoor places of worship in some counties. Id. The July 13, 2020 Order did not restrict outdoor in-person worship. Id.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 60(b) provides for relief from a final judgment, order, or proceeding upon a showing of the following:

> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
> (4) the judgment is void;

[1] Defendant groups are defined in the Order, Dkt. No. 76.

> (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
> (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).[2]

In this district, motions for reconsideration are also governed by Central District Local Rule 7–18. "Courts in this district have interpreted Local Rule 7-18 to be coextensive with Rules 59(e) and 60(b)." Tawfilis v. Allergan, Inc., 2015 WL 9982762, at *1 (C.D. Cal. Dec. 14, 2015). Local Rule 7-18 provides that a motion for reconsideration of the decision on any motion may be made only on the grounds of:

> (a) a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision, or (b) the emergence of new material facts or a change of law occurring after the time of such decision, or (c) a manifest showing of a failure to consider material facts presented to the Court before such decision. No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion.

L. R. 7-18. "Unhappiness with the outcome is not included within the rule; unless the moving party shows that one of the stated grounds for reconsideration exists, the Court will not grant a reconsideration." Roe v. LexisNexis Risk Sols. Inc., 2013 WL 12134002, at *2 (C.D. Cal. May 2, 2013).

III. DISCUSSION

Plaintiffs seize upon a plain statement from the Order: "the law Plaintiffs seek to enjoin no longer restricts Plaintiffs from holding in-person religious services." (Motion p. 4 (quoting Order p. 6.)) In essence, they argue that this is no longer true because in the time since the Court's Order, the State has tightened restrictions on indoor religious worship (while continuing to allow outdoor religious worship). (Motion, p. 4.) Specifically, Plaintiffs contend that "Defendants renewed their ban on certain religious services on July 13, 2020," after the Court's Order was issued. Id. Further, Plaintiffs argue that because Executive Order N-33-20 is still in effect, Defendants retain the ability to issue public health guidelines prohibiting religious services at any time. Id. To Plaintiffs, all of this amounts to a material difference in fact or law that the Court either should have contemplated at the time of the Order or should consider as the emergence of new law or material facts now.

[2] The parties disagree on the applicable rules. However, Plaintiffs' Motion is clearly brought pursuant to Local Rule 7-18 and Federal Rule of Civil Procedure 60(b). (See Motion p. 5.)

Plaintiffs attempt to thread a very difficult needle. They may not merely challenge the fact that they cannot gather in crowds to worship—they must challenge the specific laws or orders that make that so. The San Bernardino County and Riverside County Orders challenged in the Complaint have since been rescinded and not reinstated. (Motion p. 2.) Any challenges to those Orders were and remain moot. This leaves State orders and their enforcement. Specifically, this leaves Executive Order N-33-20, which "has never been lifted and forms the basis for any underlying, subsequent order and directives." (Reply p. 7.)

But if the relevant law in assessing Plaintiffs' claims is Order N-33-20, nothing material has changed. That Order urging Californians to obey public health guidance was in effect at the time of the Court's Order and remains in effect today. And it does not, itself, prohibit worship.

Instead, if what is relevant to Plaintiffs' claims are the Covid-19 directives issued by the Department of Health, things have changed, but the operative directives are not challenged in the Complaint, despite Plaintiffs' opportunity to amend. The Complaint alleges the State "prohibits all religious leaders from conducting in-person and out-of-home religious services, regardless of the measures taken to reduce or eliminate the risk of the virus spreading." (Complaint ¶ 34.) This is no longer true. While the operative guidance in effect at the time of the Complaint completely prohibited outdoor in-person worship, that guidance is no longer in effect; it has been replaced most recently by the August 28, 2020 "Four-Tier Reopening Plan." (State Opposition, Dkt. No. 83 p. 4.) The August 28, 2020 guidance also superseded the July 13 Order Plaintiffs reference as controlling law in their Motion. Id. The guidance allows in-person worship to occur outside in all counties and in-person indoor worship in California counties with low Covid-19 rates. Id.

Indeed, in the time since Plaintiffs filed their Motion, Riverside County has dropped to the Tier 2 of the Four-Tier Plan.[3] This means that in Riverside County, places of worship may open indoors with modifications: a maximum number of people of 25% capacity or 100 people, whichever is fewer. Id. San Bernardino County is still in Tier 1, which permits outdoor worship with modifications but prohibits indoor worship. Id. If this is the legal regime Plaintiffs wish to challenge as violative of their rights, the Court deserves the benefit of a challenge to these guidelines specifically. It may not offer an advisory opinion on the absolute prohibition of religious worship in California.

Other relevant law also remains unchanged. As this Court has already observed, though courts are generally reluctant to declare a case moot based on a defendant's voluntary cessation of activity, governmental policy change "presents a special circumstance in the world of mootness." Am. Cargo Transp., Inc. v. United States, 625 F.3d 1176, 1179-80 (9th Cir. 2010). Unlike the assumptions made of private actors, courts "presume the government is acting in good faith." Id. Moreover, change in law "is usually enough to render a case moot[.]"

[3] California State Government, Blueprint for a Safer Economy, https://covid19.ca.gov/safer-economy/ (last visited Oct. 1 2020); See also Dkt. No. 85.

Rosebrock v. Mathis, 745 F.3d 963, 971 (9th Cir. 2014). If the law of mootness or presumption of governmental good faith changed, reconsideration of the Court's Order would be warranted, but these principles remain the same.

IV. CONCLUSION

For the reasons above, the Court DENIES Plaintiffs' Motion. The October 19, 2020 hearing is VACATED.

IT IS SO ORDERED.