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2020 | Volume 6

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Supreme Court Says New York Can't Limit House of Worship Attendance

New York has been temporarily banned from enforcing attendance limits on houses of worship, even in designated novel coronavirus high-risk areas, the U.S. Supreme Court decided in early December. The Roman Catholic Diocese of Brooklyn and Agudath Israel of America had asked the court in November for temporary injunctions against the New York governor's executive order.

This is a partial reversal of previous rulings, and indicative of the court's shift to the right. Earlier this year the court upheld limitations by governors in California and Nevada. Though the situation has eased in New York, the court did not want the state to be able to impose strict limitations in the future.

New York's rule had restricted religious service attendance in high-risk zones to 10 or 25 people, depending on the zone. The court found that to be "severe" and "inflexible," particularly because secular businesses were not restricted at all.

"It is time — past time — to make plain that, while the pandemic poses many grave challenges, there is no world in which the Constitution tolerates color-coded executive edicts that reopen liquor stores and bike shops but shutter churches, synagogues, and mosques," wrote Associate Justice Neil Gorsuch.

Dissenting Assoc. Justice Stephen Breyer argued that "the risk of transmission is higher when people are in close contact with one another for prolonged periods of time, particularly indoors or in other enclosed spaces ... and administrative considerations that must be balanced against ... First Amendment challenges."

"We welcome the protections of religious liberty, but urge our members to also use their rights to be vigilant with their health — take advantage of online services and support your church's safety measures," says Amireh Al-Haddad, Southern Union Conference director of public affairs and religious liberty.

NEWS OF THE WORLD:

While churches in the United States fight occupancy restrictions, the owner of 400 Rabbits tequila bar in England has applied to be considered a place of worship in his fight against "unfair" rules against hospitality venues. James Aspell is only allowed to offer carryout and delivery from his establishment, while churches and other houses of worship are allowed to welcome people from the same household to enter. He has applied to reopen his bar as The Church of 400 Rabbits. "It's tongue-in-cheek but it's come from a serious place," he said. "We think the tier restrictions announced last week and how they're targeted at hospitality businesses like mine seems incredibly unfair. It could be months before we're allowed to open again." He says nearly every type of business and venue is allowed to open except bars and restaurants: "...they're even allowing the Christmas market to go ahead, which is right outside our door — so there'll be crowds of people attending and we're not even allowed to open." Aspell has submitted his plans, is gathering the required signatures from 20 households of "church" members, and will wait for a response. "I'm not anticipating it being a quick decision at all. They might just throw it straight in the bin, but hopefully they'll contact me fairly soon."

SCOTUS Reexamines Rulings Surrounding Catholic Foster Case

The U.S. Supreme Court recently heard arguments pertaining to the long-running Catholic Social Services foster care situation in Philadelphia, PA. Their reconsideration could expand religious liberty protections.

The city has long contracted with Catholic Social Services for foster care, but in 2018 determined that the agency's refusal to let LGBTQ couples adopt was discriminatory. Catholic Social Services asked for an exemption as a faith-based organization, and claimed discrimination by the city.

At the recent hearing, lawyers for the city said it should be allowed to discriminate against religious providers as long as the city's rules are "neutral laws

of general applicability." Lawyers for CSS argued that they should reconsider a previous case that allows governments to target religious minorities and places burdens on their "free exercise."

"The city is reaching out and telling a private religious ministry—which has been doing this work for two centuries—how to run its internal affairs," said Catholic Social Services attorney Lori Windham. "A universal clause in every contract bars sexual orientation discrimination," countered Neal Katyal, the attorney representing Philadelphia in the case. "That clause ... applies equally to every [foster care agency], religious and secular alike."

"The city is reaching out and telling a private religious ministry ... how to run its internal affairs."

Jehovah's Witness Declined Employment Based on Belief

Jehovah's Witness Brianna Bolden-Hardge has filed suit in California, asserting that her religious freedom rights were violated after she refused to sign a loyalty oath to defend the state and U.S. constitutions.

Bolden-Hardge had accepted a position with the California State Controller's Office payroll department, but had requested religious accommodation to include an oath addendum saying her first allegiance was to God, and that she would not

bear arms to support the state. She says her beliefs keep her from participating in any type of violence in support of a government.

"When some Christians and some of our brothers and sisters read the sweeping language of a typical loyalty oath, their first reaction might be 'I can't make that promise to anyone other than my God.' We respect a person's right to make that decision. It's their decision and theirs alone," says Robert Hendriks, spokes-

man for the faith in the U.S. Her request was eventually denied, and the job offer was withdrawn. Besides monetary damages, her suit seeks a declaration that failing to accommodate a religious belief or to hire someone based on their religion is unconstitutional, both federally and in California, and that it violates civil rights and fair employment. Mennonites and Quakers are among other faith groups affected by this dilemma.

Oregon Judge Denies Preliminary Injunction to Lift Restriction of In-class Instruction

Three Christian schools in Oregon filed suit to challenge Gov. Kate Brown's order restricting in-class instruction for K-12 education due to the pandemic, but a federal judge has denied the preliminary injunction.

Horizon Christian School, Life Christian School, and McMinnville Christian Academy asked the judge to halt the order and allow them to reopen with safeguards in place. The schools' attorney argued the case from the standpoint of religious liberty, saying that communal gathering is a tenet of Christian education, and that parochial schools are having their freedoms of religion and expression violated.

The argument was heard by U.S. District Judge Michael W. Mosman, who said he found it "utterly implausible" that there was any motive to shut down religious schools in the governor's executive order. He recognized potential financial hardship to private religious schools, but said that "all other hardships must bow to the goal of protecting human life."

Attorney John Kaempf also pointed out that the state had received 5 million free KN95 masks from the Federal Emergency Management Agency this year, but had distributed them only to public schools, not private schools. He said this represents religious discrimination.

"We got 5 million piec-

es of protective gear and decided only to give them to public schools, which is absolutely legal," said Marc Abrams, the attorney representing the governor. "It's our property. We decided to keep it within the taxpayer's realm."

The schools' attorney argued that communal gathering is a tenet of Christian education.

The Oregon Dpt. of Ed. states that metrics for reopening schools are the same for private and public schools. As of October 30, Oregon schools were allowed an average of approximately 20-25% in-person capacity depending on region.

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Supreme Court Justice Warns Pandemic Has Restricted Religious, Individual Liberty

Supreme Court Justice Samuel Alito warned listeners that the COVID-19 pandemic has brought "previously unimaginable restrictions on individual liberty," in a keynote speech at the Federalist Society's National Lawyers Convention, held virtually in November. He said that a shift in rights has affected numerous liberties, including free speech, religious freedom, and even the constitutional right to a speedy trial.

Alito presented a list of areas where he sees attitudes toward long-held rights shifting, first and foremost of which was "lawmaking by executive fiat rather than legislation," and explained this as widespread use of executive discretion to impose restrictions in order to fight the pandemic. He also cited a Nevada case where casinos were allowed to operate at 50% capacity, but churches and synagogues were limited to an atten-

dance of 50 people.

"The COVID crisis has served as a sort of constitutional stress test," the Justice said, continuing, "and in doing so, it has highlighted disturbing trends that were already present before the virus struck."

However, he also asked those in virtual attendance to not take his words as judgment on whether various coronavirus restrictions are good public policy or not.

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