



Pandemic and the War on Churches

On December 14, eleven days before Christmas, the first Covid-19 vaccine was given to health care workers in New York City. Other vaccines followed. The rapid development of these vaccines is an extraordinary story of scientific advancement made possible by new technologies in genetic research that have exploded in the last decade. The story is also one of government mobilization under the Donald Trump administration, one for which he was given little credit by the mainstream media in the heat of a presidential election.

By March the Covid-19 crisis should be over. Americans and the Western world suffered immensely from the first announcement by China—in late 2019—of the outbreak of Covid-19 in its country. Covid-19 became a global pandemic that disrupted economies, small businesses and education, and caused untold psychological trauma, especially for those who lost their jobs or businesses.

The lessons learned from this pandemic will multiply as it is studied by medical researchers, health officials and political leaders. These lessons will be of critical importance in preparing for any future pandemic. Pray that the next pandemic is not more deadly.

One political lesson from the Covid-19 pandemic is that the left is relentless in its war on religion. Progressive governors and their public health officials, some without any medical or public health expertise, used the pandemic to shut down churches of all sorts. This has led to a battle in the U.S. courts over mandates forcing churches to close. Thankfully, these blanket mandates are being overturned step by step in the courts. Without legal protection, churches would be in ruins.

In a more normal world, churches would remain open as havens for sufferers of a national crisis. Instead, some governors and public health officials ordered churches and temples to shut down. It did not matter if social distancing, masking or sanitation precautions were in place. Religious leaders were ordered not to host weddings or funerals.

Critics of these measures pointed out that other businesses and services were spared from these mandates. For example, liquor stores, department stores and big box stores such as Walmart and Costco were allowed to remain open as essential businesses. Black Lives Matter protesters and rioters were not required to “social distance” or wear masks (although some did to hide their identities from the police).

Those governors and mayors who ordered churches and synagogues shut down, while arbitrarily allowing other institutions to stay open, brought to their policies an overt bias toward organized religion. Their bias was more than prejudice. These elected officials simply could not fathom the importance of prayer or the obligations of Christians and Jews to attend services, marry in a religious ceremony and bury loved ones with funeral services conducted by a priest, minister or rabbi. These bans on religious services are a continuation of the left’s long-running attack on Christianity.

The courts are protecting religious freedom for now by giving preliminary relief from the arbitrary bans. This does not mean that we should let our guard down. Religious liberty continues to be threatened. A review of the bans and court decisions will prepare us for the battles to come.

Governors Out of Control

As the pandemic entered a second wave last fall, with more cases being reported and a rising number of Covid-19 deaths, governors responded by issuing orders that banned large gatherings. The orders varied. The guidelines in these orders appeared arbitrary and inconsistent. Some large assemblies were acceptable, others not. The inconsistent standards suggested that public health had taken a back seat to politics.

Whether or not politics was the driving force in these guidelines, two facts stand out: 1) churches and synagogues

were targeted as “hot spots” for the spread of Covid-19; and 2) these orders disregarded fundamental principles of religious liberty. After early hesitation the U.S. Supreme Court finally decided in late November that religious liberty was at stake in these draconian measures, in *Roman Catholic Diocese of Brooklyn v. Cuomo*.¹ Constitutional rights, in particular the Free Exercise Clause contained in the First Amendment, were not to be discarded on a whim.

New York Governor Andrew Cuomo’s executive orders identifying clusters of Covid-19 cases and restricting surrounding areas were especially arbitrary. Areas for restriction were placed into color zones made up of “red,” “yellow” and “orange” areas. The red zone limited worship services to 10 people. The concentric area around the red zone was designated orange, where attendance was limited to 25 people; followed by a yellow zone limiting attendance to 50 percent of the building’s capacity.

Liquor Stores More Accessible Than Church

Secular businesses deemed “essential” were subject to different restrictions, even in red zones.² So-called essential businesses that fell under separate enforcement included liquor stores, bike shops and law firms. In short, it was deemed unsafe to go to church with more than 10 people, but it was all right to shop for a six-pack of beer or a bike. Social distancing and wearing a face mask at a religious service in a large church building or synagogue were not enough in certain zones. Capacity was sharply limited by executive order.³

It did not matter whether services were held in St. Patrick’s Cathedral, with a seating capacity of 2,500, or a tiny temple in Brooklyn. Cuomo’s order disregarded Orthodox Jewish tradition which requires a quorum of 10 adult men. In effect, Cuomo, who claims to be an enlightened progressive and a firm believer, excluded women from participating in Orthodox prayer services by limiting the number to 10. No wonder the Diocese of Brooklyn and Orthodox Jews filed suit.

Governors’ strictest restrictions in California and Nevada were even more irrational. In California, Gavin Newsom’s strictest orders restricted religious services to 25 percent capacity or 100 people, whichever was less. Then *Newsom halted all indoor religious services in California’s population centers* and forced most indoor businesses to close or to operate with such limited capacity that they would be forced by bankruptcy to close. He kept most schools closed, including the nation’s second largest school district, Los Angeles.

Before Newsom’s orders went into effect he had landed in hot water when photos showed him dining at the exclusive and extremely expensive indoor restaurant The French Laundry, with a group of tightly seated friends. Newsom’s orders, which banned indoor dining and placed densely populated and sparsely populated areas in the same tiers, drew widespread protest.

Many restaurant owners and gym owners, as well as other businesses, invested heavily to make their establishments Covid-safe only to be told to close their indoor operations. “We think a restaurant is a safer place to be than in a friend’s living room,” said Jot Condie, the president and chief executive officer of the California Restaurant Association. “Yet restaurants and their employees are again being forced to pay a price for behavior that has little or nothing to do with them.”⁴ Churches following social distancing are safer than meeting friends in one’s living room as well.

Rural areas were especially outraged by Newsom’s Procrustean rules. Placer County, stretching from the outskirts of Sacramento to Lake Tahoe, was moved into the strictest of the four color-coded tiers.⁵ State Assemblyman James Gallagher, representing Yuba City outside Sacramento, urged his constituents to ignore the closure rules. “We are all free people who can exercise our freedom responsibly. I don’t think you should close your business, church, or school. I would encourage you to keep them open.”⁶

In Nevada, Governor Steve Sisolak’s order applied the same rules to rural areas and to Las Vegas. *Casinos were excluded from strict capacity limits*. As a result, people had the freedom to play poker, slot machines and other games, while religious worshippers had their freedom restricted.

Churches Litigate to Stay Open

Behind the headlines of these lockdowns has been active confrontation between church and state officials, conducted in the courts and the media well before the more recent court decisions. In New York, two Orthodox Jewish synagogues joined the Catholic Diocese of Brooklyn in asking the court to suspend Governor Cuomo’s order limiting church services to just 10 people. In their complaint, they wrote, “The Governor’s guilt-by-religious-association restrictions have made it impossible for applicants and their members to exercise their religious faith.”⁷

The Diocese of Brooklyn enforced strict mask-wearing and social distancing before Cuomo’s harsher orders were issued. The Diocese noted that by following the prior regulations the diocese’s churches had not experienced any Covid-19 outbreaks.

Similar petitions were filed in other states. In Nevada, the rural Calvary Chapel Dayton Valley fought Governor Sisolak's orders that place a cap on indoor services. Calvary Chapel lawyers argued that "the Governor's directive treats comparable secular gatherings more leniently than houses of worship. This discrimination against religious assemblies and speech for no rational—let alone compelling—reason violates the First Amendment."⁸ Ryan Tucker, senior counsel and director of the Center for Christian Ministries with the Alliance Defending Freedom, said the chapel members experienced loneliness, depression and marital problems when the congregation did not meet in person.⁹

In 5-4 decisions in May and July, the U.S. Supreme Court *denied* church requests to block state regulations in California and Nevada, respectively. No explanation was given by the Court in its refusals, for which Chief Justice John Roberts joined the four liberal justices. Justice Samuel Alito, joined by Justices Clarence Thomas and Brett Kavanaugh, wrote in their dissent to the Calvary Chapel Dayton Valley decision, "A public health emergency does not give governors and other public officials carte blanche to disregard the Constitution for as long as the medical problem persists."¹⁰

As the fall unfolded, the conflict in California between church and state intensified. On December 8 Calvary Chapel in San Jose and its pastor were held in contempt of court and fined about \$55,000 for repeatedly defying a court order to stop holding unmasked services in violation of Covid-19 health restrictions.¹¹ Calvary Chapel congregants were not relying only on legal action. Outside the San Jose courthouse, Calvary supporters gathered holding signs reading "Churches are essential." Calvary Pastor McClure told the crowd that he was not opposed to masks, and if people want to wear them, they should. He added, "But I'm not a policeman; I am a pastor."¹²

Meanwhile, other California churches were defiant. For example, Harvest Rock Church, with multiple "campuses" across the state, challenged the state restrictions on churches in court, maintaining that Governor Newsom "openly encouraged" Black Lives Matter protests across the state in May and June. Gatherings of hundreds of thousands of protesters ignored Covid-19 restrictions, which were not enforced.

Supreme Court to the Rescue, Barely

On November 25 the U.S. Supreme Court ruled 5-4 in favor of the Diocese of Brooklyn, granting a preliminary injunction because the applicants showed

a likelihood of success based on their First Amendment claims. The Court decision was scathing. The Court held that the Catholic Diocese of Brooklyn had shown that state restrictions violated a "minimum requirement of neutrality" by specifically limiting religious entities while allowing secular business to be categorized as "essential." Furthermore, the Court noted that "the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Finally, the Court found that the state of New York had not demonstrated that the requested injunction would harm the public.¹³

This decision set the stage for the Court to review Governor Newsom's executive orders. Within weeks of the *Diocese of Brooklyn* decision, the Court instructed the lower federal court in Los Angeles to revisit Governor Newsom's ban on worship services in all population centers of California, and the Court ordered lower courts to revisit restrictions on houses of worship in Colorado and New Jersey. These were victories for First Amendment rights—although not complete victories.¹⁴

A Consequential Court Confirmation

What changed the Supreme Court's approach between its July decision deferring to Nevada's restrictions on churches and its late November decisions giving churches greater First Amendment protection? President Trump's appointment of Justice Amy Coney Barrett to fill the seat vacated by the death of the liberal Ruth Bader Ginsburg—plus the Senate's 52-48 vote to confirm the nomination.

As a result, five justices (including three appointed by Trump) voted to protect religious liberty, while the three remaining liberals on the Court, along with Chief Justice John Roberts, sought to uphold the restrictions. Covid-19 damaged Trump politically, but his conservative legacy on the Supreme Court is real and enduring.

On December 10, a California court issued a stinging rebuke in *Father Trevor Burfitt v. Gavin Newsom* when it supported an injunction against California's Covid-19 restrictions on churches. Justice Gregory Pulskamp echoed U.S. Supreme Court Justice Brett Kavanaugh: "Assuming all the same precautions are taken, why can somebody walk down a grocery store aisle but not a pew? And why can someone safely interact with a brave deliverywoman, but not a stoic minister?"¹⁵

In Nevada, Calvary Chapel Dayton Valley Church, which was denied preliminary relief by the Supreme Court in July, was vindicated on December 16 when the U.S. Court of Appeals for the 9th Circuit reversed the district court and instructed

it to reconsider the case in light of the Supreme Court's November decision in *Catholic Diocese of Brooklyn*.

The Fight Is Far from Over

The Supreme Court's decisions brought welcome cheer to Christians (and Jews) shortly before Christmas. Few, however, think the fight is over. Now it is up to the lower courts to determine whether health restrictions are neutral to churches. There will be other court cases to follow.

For a decade or more the left has accelerated the war against religious liberty. Some observers believe the next front will be found in the persecution of Christian schools, which have generally remained open during the Covid-19 pandemic.¹⁶ Already a Kentucky religious school, Danville Christian Academy, had to sue to challenge a statewide order closing down all in-person learning. The Supreme Court rejected the case on December 17 only because the Kentucky restrictions were scheduled to expire at the start of the Christmas break.

Besides shutdown orders, pressure may be applied against Christian schools through attacks on school choice programs and through regulations by the federal Department of Education. Teachers unions welcomed with joy the results of the 2020 presidential election. A new Secretary of Education under a Biden administration can use regulatory mandates to push curricula promoting racial, gender and LGBT ideologies. Schools resisting such curricula changes may face losing accreditation and state funding.

Catholic and Christian schools make vital contributions to American culture. They will need political support if they are to continue their mission free from heavy-handed government interference. The recent Supreme Court deci-

sions requiring government neutrality toward churches are a step in the right direction, but more such steps will be needed.

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