

The Bad News in the Supreme Court's Ruling on In-Home Bible Studies

It was good to see the Supreme Court rule yet again in favor of religious liberty in the California case to allow in-home bible studies and worship sessions for the first time since the pandemic. Yet the fact that the ruling was only 5-4, not to mention some of the reasoning in the dissenting opinion, gives real cause for concern. This should not have been a close vote at all. Instead, it should have been a slam dunk for religious freedoms.

As reported on Forbes, "The Supreme Court ruled by a 5-4 margin late Friday that California's coronavirus-related restrictions on gathering in private homes violated constitutional rights on the free exercise of religion, the latest ruling from the high court that prohibits authorities from enforcing limits on religious services."

Chief Justice John Roberts joined with the three liberal justices, and the dissenting opinion was written by Justice Elena Kagan.

As for the majority opinion, the reasoning was as follows.

"First, California treats some comparable secular activities more favorably than at-home religious exercise, permitting hair salons, retail stores, personal care services, movie theaters, private suites at sporting events and concerts, and indoor restaurants to bring together more than three households at a time."

If these kinds of activities are permitted, why on earth would religious gatherings in the privacy of one's home not be permitted? Based on what standard?

“Second, the Ninth Circuit did not conclude that those activities pose a lesser risk of transmission than applicants’ proposed religious exercise at home. The Ninth Circuit erroneously rejected these comparators simply because this Court’s previous decisions involved public buildings as opposed to private buildings.”

So, since the Supreme Court’s overturning the Ninth Circuit’s oppressive rulings against church gatherings only pertained to public buildings, they wrongly thought they could restrict the rights of Christians meeting in private homes.

Not so, the high court ruled. Are you getting the message over there in the 9th Circuit?

“Third, instead of requiring the State to explain why it could not safely permit at-home worshipers to gather in larger numbers while using precautions used in secular activities, the Ninth Circuit erroneously declared that such measures might not ‘translate readily’ to the home.”

Was there no hint of anti-religious bias in the 9th Circuit ruling? Was it truly dispassionate and even-handed, just based on faulty logic? Call me a little skeptical here.

“And fourth, although California officials changed the challenged policy shortly after this application was filed, the previous restrictions remain in place until April 15th, and officials with a track record of ‘moving the goalposts’ retain authority to reinstate those heightened restrictions at any time.”

Moving the goalposts indeed, which is why so many people of good conscience in California have been fighting back.

Indeed, “This is the fifth time the Court has summarily rejected the Ninth Circuit’s analysis of California’s COVID restrictions on religious exercise.”

Kudos to the Supreme Court for getting this right. But serious concerns rise for the slim majority victory and even more for the dissenting viewpoint.

In short, Justice Kagan wrote, "California need not, as the [majority] insists, treat at-home religious gatherings the same as hardware stores and hair salons – and thus unlike at-home secular gatherings, the obvious comparator here" adding, "the law does not require that the State equally treat apples and watermelons."

Put another way, California can discriminate against religious gatherings if it so chooses, since not all gatherings are created equal.

But, as noted in an op-ed on the Jewish Hamodia website, "The apples-watermelons analogy is only tenable if you are willing, like California's experts, to ignore the plain facts, and if you are inclined to put aside freedom of religion during a pandemic."

The editorial also cited the arguments of attorney Charles LiMandri, on behalf of one of the aggrieved California churches: "Indeed, in rebuttal, LiMandri asserted that 'there is no scientific data showing churches are more risky when they practice the protocols.' LiMandri said his client's church has not had any COVID-19 cases traced to exposure via its worship services. And he adduced a study showing indoor religious services have been held safely across the country without contributing to the spread of the virus, according to a report in Courthouse News Service."

Back in February, Justice Neil Gorsuch, joined by Justices Alito and Thomas, issued a strong rebuke to these California courts, writing, "once more, we appear to have a state playing favorites during a pandemic, expending considerable effort to protect lucrative industries (casinos in Nevada; movie studios in California) while denying similar largesse to its

faithful.”

It is high time that the state of California, with its courts, along with other states and courts that are ruling against our religious liberties, get this right.

And it is quite scary that the matter is even one of debate.
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