

Liberty Counsel Continues to Fight for First Amendment Rights One Year Later

It has been one year since state governors and local officials began issuing executive orders that created discriminatory restrictions against houses of worship that deemed them to not be “essential.” As a result, many pastors and churches were punished, and the churches were ordered to remain closed, despite their extraordinary safety measures.

On March 30, 2020, in Florida, Dr. Rodney Howard-Browne, pastor of The River at Tampa Bay Church, was the first pastor to be punished as a result of government restrictions on churches during COVID-19. Howard-Browne was arrested by Hillsborough County Sheriff deputies for holding a church service on March 29, allegedly violating the Hillsborough County Executive Order that went into effect the previous Friday at 10:00 p.m. The two charges were second-degree misdemeanors that carried a maximum penalty of two months in jail and \$500 fine.

Liberty Counsel represented Howard-Browne, who was taken into custody despite the fact that the church went above and beyond the requirements for secular businesses to protect the health and well-being of the people who attended. And this arrest was also in spite of the fact that, a few days before the Sunday service, the Hillsborough County Sheriff assured the pastor that he had no intent to interfere with the church service.

On March 20, 2020, Hillsborough County issued an administrative order restricting all “public or private gatherings, including community, civic, public leisure, faith-based events, sporting events, concerts, and any similar events that bring together more than 10 people in a single room, single space, or any venue, at the same time...” The order

exempted, among other things, "shelters." The order does not modify the word "shelters," which is an exceptionally broad word. On March 27, 2020, Hillsborough County issued a "Safer-at-Home" administrative order that contains 42 paragraphs of exceptions, including "religious personnel." Following this long list of exceptions, the same order adds another huge exception: *"Businesses which are not described in paragraph 3, and are able to maintain the required physical distancing (6 feet) may operate"* (emphasis added). Paragraph 3 is the section with 42 paragraphs of exceptions. Paragraph 5, quoted above, stated if a "business" is not mentioned as exempted but is able to comply with the six (6) feet separation may operate.

Following this arrest, Liberty Counsel began preparing a federal lawsuit that was set to be filed on April 2, but on April 1, 2020, Gov. Ron DeSantis issued a statewide executive order declaring that attendance at churches and houses of worship was essential activity. He also preempted every local order to the contrary.

On April 2, 2020, Hillsborough County Council met and voted to reverse its order from law. The charges against Howard-Browne were later dropped.

On April 5, 2020, in Virginia, police served a summons to Pastor Kevin Wilson and Lighthouse Fellowship Church on Chincoteague Island for holding a church service on Palm Sunday for 16 people spaced far apart in a sanctuary that seats 293. The charge was violating Virginia Gov. Northam's COVID Order 55 limiting church attendance to no more than 10 people, and it carried a penalty up to a year in jail and/or a \$2,500 fine. Liberty Counsel filed a federal lawsuit against Northam for targeting churchgoers by violating their religious freedom.

Lighthouse Fellowship Church does not have internet service, and thus there was no Easter virtual services. The charges against Wilson and the church have since been dropped, but the civil case is still pending.

On Good Friday, April 10, 2020, Kentucky Gov. Andy Beshear threatened churches to not hold parking lot services on Easter Sunday. Despite a federal court order blocking the Louisville mayor from stopping parking lot services, Beshear proceeded with his threats. On April 12, 2020, Kentucky state troopers

came to Maryville Baptist Church on Easter, wrote down license plate numbers and placed notices on every car in the church parking lot. The church set up speakers outside for parking lot service. The state troopers did not go inside the church where a small number of people were spread far apart in a 700-seat sanctuary. Following Beshear's threat to target anyone who attended a church service, they placed quarantine notices on each car, including those where people stayed in their cars for the drive-in parking lot service. Anyone who did not drive off were given notices, including two media vehicles.

On behalf of Maryville Baptist Church and Pastor Jack Roberts, Liberty Counsel filed a federal lawsuit against Beshear for violating their religious freedom by targeting churchgoers on Easter Sunday. Liberty Counsel won two emergency injunctions from a unanimous three-judge panel on the U.S. 6th Circuit Court of Appeals, prohibiting the enforcement of Beshear's March 19 and 25 COVID-19 orders against church services at Maryville Baptist Church and Roberts.

On Thanksgiving Eve, the U.S. Supreme Court ruled in favor of New York churches and synagogues, striking down Gov. Cuomo's restrictions of 10 and 25 people.

On December 3, 2020, the Supreme Court then granted our petition on behalf of Harvest Rock Church and Harvest International Ministry, in which we represent scores of California churches. The high court set aside the lower court rulings and directed the lower courts to reconsider the case in light of its decision.

Since then, on February 6, 2021, the U.S. Supreme Court again ruled in favor of Liberty Counsel's case involving Harvest Rock Church and Harvest International Ministry striking down California Gov. Gavin Newsom's total ban on indoor worship. This was the second time Liberty Counsel petitioned the high court on behalf of these churches. The court ruling also included South Bay United Pentecostal Church.

In Maine, Liberty Counsel has filed a petition for cert to the U.S. Supreme Court and also filed a reply brief to the U.S. District Court of Maine regarding a renewed preliminary

injunction on behalf of Calvary Chapel of Bangor asking the court to strike down Gov. Janet Mills' unconstitutional restriction imposed against churches and places of worship. Maine has the most severe restrictions in the nation on places of worship with its 50-person numerical cap (or now five people per 1,000 square feet, which is still 50 people for Calvary Chapel of Bangor.

In Illinois, Liberty Counsel petitioned the U.S. Supreme Court twice and will file a motion for summary judgment to the district court on behalf of Elim Romanian Pentecostal Church and Logos Baptist Ministries in their federal lawsuit against Illinois Gov. J.B. Pritzker for his unconstitutional executive orders discriminating against these churches by restricting in-person worship services to no more than 10 people. Last May, within three hours of having to respond to the Supreme Court, Pritzker removed all restrictions on places of worship.

This year, the Supreme Court denied the churches' cert petition with a note that Justice Amy Barrett took no part in the consideration of the petition. Barrett was on the bench at the 7th Circuit Court of Appeals when it denied the preliminary injunction, and when the churches filed a petition with the 7th Circuit requesting rehearing en banc with the entire panel of judges. The petition for rehearing en banc would have placed this case on her desk and on the desks of all the judges to consider the petition. This is no doubt the reason Justice Barrett took no part in the consideration at the Supreme Court.

Gov. Jared Polis dropped Colorado's COVID unconstitutional limits on religious gatherings and declared that houses of worship are essential and removed attendance caps. Liberty Counsel represents Andrew Wommack Ministries, a Colorado nonprofit charitable corporation and religious ministry that provides Christian and biblically based conferences, seminars, events and other religious gatherings. Polis reversed course and revised the COVID restrictions for churches from the prior

175-person limit to 175 people per room, not counting staff with no limit on the number of staff because of the Supreme Court's decision in Liberty Counsel's case of Harvest Rock Church and Harvest International Ministry in California and the Court's ruling on Thanksgiving Eve in favor of New York churches and synagogues.

In total, Liberty Counsel has gone to the U.S. Supreme Court five times since May 2020 on behalf of churches and consulted with over 2,000 pastors and churches in 44 states.

Liberty Counsel founder and chairman Mat Staver said, "It's been one year since we began the fight for the right of churches to meet for worship. The First Amendment does not evaporate in a time of crisis. We cannot allow one person, whether state or local, to have unchecked discretion to write a church into or out of existence by one word—the word 'essential.' Such authority is extraordinary and runs counter to American history and constitutional law." {eo}

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