

Supreme Court Ends California's Total Worship Ban

The U.S. Supreme Court ruled in favor of Harvest Rock Church and Harvest International Ministry and partially granted the injunction pending appeal in the federal lawsuit against California Gov. Gavin Newsom's total ban on indoor worship. This was the second time Liberty Counsel appealed to the high court on behalf of these churches. The ruling also included South Bay United Pentecostal Church. Liberty Counsel represents Harvest Rock Church, HIM and Pastor Ché Ahn.

In a 6-3 decision, the Supreme Court enjoined California from enforcing the total ban on worship in the "Blueprint's" Tier 1 pending disposition of the case at the 9th Circuit Court of Appeals and a petition for writ of certiorari to the Supreme Court. A majority held that instead of the total ban, California may impose a 25% building capacity limit in Tier 1. Based on the current record, a majority did not enjoin the ban on singing and chanting but did conclude that could be further addressed on remand. Justices Kagan, Breyer and Sotomayor dissented.

Justices Thomas, Gorsuch and Alito would have granted the injunction against Tier 1 and against the singing and chanting ban. While the court wrote several times that the churches may present additional evidence of the discriminatory treatment on the singing and chanting ban, Gorsuch noted that California exempts music and TV production for the entertainment industry where singing is permitted. He noted that California's scheme is confusing, and that on this record, he would hold that against the state and enjoin the ban on singing and chanting in places of worship.

Gorsuch, joined by Thomas and Alito, wrote: "Today's order should have been needless; the lower courts in these cases should have followed the extensive guidance this court already gave."

Regarding singing and chanting, he wrote: "But if Hollywood may host a studio audience or film a singing competition while not a single soul may enter California's churches, synagogues and mosques, something has gone seriously awry."

The injunction remains in place until further litigation is completed in the courts below and a petition for writ of cert is acted upon by the Supreme Court. Liberty Counsel will return to the lower courts to continue litigating the ban on singing and chanting.

On Thanksgiving Eve, the U.S. Supreme Court granted an emergency petition for an injunction pending appeal on behalf of New York City synagogues and Roman Catholic churches in *Roman Catholic Diocese of Brooklyn v. Cuomo* and *Agudath Israel v. Cuomo*.

Then, on Dec. 3, 2020, in the *Harvest Rock Church and HIM* case, the U.S. Supreme Court granted cert and vacated the lower court orders involving the emergency petition. The court stated in its order:

"The application for injunctive relief, presented to Justice Kagan and by her referred to the Court, is treated as a petition for a writ of certiorari before judgment, and the petition is granted. The September 2 order of the United States District Court for the Central District of California is vacated, and the case is remanded to the United States Court of Appeals for the Ninth Circuit with instructions to remand to the District Court for further consideration in light of *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U. S. ____ (2020)."

However, the lower courts refused to properly apply the

Supreme Court's constitutional road map. While the Ninth Circuit Court of Appeals granted the injunction pending appeal against Newsom's "Blueprint" Tiers 2-4, it upheld Tier 1 and the Regional Stay-at-Home Order, which imposed a complete ban on in-person worship. Tiers 2-3 placed a 100- and 200- person cap on all houses of worship despite the size of the building. Tier 1 banned *all worship*. The three-judge 9th Circuit panel for Harvest Rock Church said it was bound to follow the recent panel decision in *South Bay United Pentecostal Church v. Newsom*, which was released on Jan. 22.

California has had the most severe restrictions in the nation on places of worship with its total ban on in-person worship for almost one year. On Aug. 28, Newsom created four Tiers, keeping 90%-plus of the churches under a no worship ban. Yet, in a 29-page, single-spaced document, he exempted hundreds of secular gatherings.

The 'No Worship' Timeline for California

March 19 – May 25: No worship.

May 26 – July 12: Worship at 25% capacity but no more than 100 people.

July 13 – Present: No worship for over 90% of California.

Therefore, except for 48 days where worship was allowed at 25% capacity but not more than 100 people, this no worship ban has been in place for 318 days as of Feb. 1, 2021.

Since August, Ahn, staff and parishioners face *daily* criminal charges of one year in jail and \$1000 in fines every day Harvest Rock Church remains open. The criminal prosecutor penned this chilling threat:

"This letter is to remind you that violations of these Orders are criminal in nature. Each day in violation is a separate violation and carried with it a potential punishment of up to one year in jail and a fine for each violation.... Any violations in the future will subject your Church, owners,

administrators, operators, staff and parishioners to the above-mention criminal penalties as well as the potential closure of your Church” (emphasis added).

Liberty Counsel founder and Chairman Mat Staver said, “Finally, Gov. Gavin Newsom’s total ban on worship has come to an end. A pandemic is no excuse for violating the Constitution. Until today, California imposed the most severe restrictions on places of worship. Not anymore. We will continue to press this case until religious freedom is totally restored.” {eo}

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