



## Is It Time for Churches to Reopen?

### Theological and Legal Implications of Unfair Restrictions on Churches

*David Closson, M.Div. and Kaitlyn Shepherd*

Since the beginning of the coronavirus pandemic, churches have had to make difficult decisions. Now, as states and cities reopen, church leaders are deciding whether to reopen for public services or continue providing livestreams and smaller, home-based ministry. Considerations such as protecting the health of worshippers, the public witness of the church, the spiritual and physical needs of members, and complying with government mandates are all a part of the conversation.

Across the country, churches are coming to different conclusions on these questions. In California, Pastor Jack Hibbs decided to reopen his megachurch on May 31.<sup>1</sup> In late July, John MacArthur and the elders at Grace Community Church in California decided that the state and local governments had overstepped their authority and opened the church for worship on July 26. The city responded by sending a letter demanding that the church stop holding indoor worship services and threatened fines and imprisonment for noncompliance.<sup>2</sup> Conversely, J.D. Greear, pastor of Summit Church in North Carolina and current president of the Southern Baptist Convention, announced at the end of July that his church would not hold public worship services for the remainder of the year and instead will facilitate home-based gatherings.<sup>3</sup>

Complicating these decisions are the strict reopening policies that some overreaching state and local governments have ordered churches to follow. In some states, governors and mayors have appeared to single out churches for unfair treatment, and as a result, pastors in these areas are beginning to speak out against these unconstitutional and overreaching mandates from the authorities.<sup>4</sup>

Incidents like these have raised questions about how pastors should respond to the government when it oversteps its authority. For example, can the government prohibit churches from holding worship services? Does a governor or mayor have the right to tell churches they cannot sing? More generally, what is the proper posture government should have towards religion? These questions have prompted further reflection on the legal and theological rationales for compliance with authorities under the current circumstances.

### **Constitutional and Legal Considerations: The Unequal Treatment of Churches**

Churches have served their members and local communities in creative ways throughout the spring and summer – including by providing livestreams and “Drive-In” services. However, now that states are reopening, many churches have resumed or wish to resume in-person meetings and services. But churches in some states and localities have been ordered by the governing authorities not to reopen, despite implementing health and safety measures consistent with CDC guidance. What are we to make of the legal restrictions and gathering bans being imposed on churches?

As of October 4, worship services are prohibited or currently subject to unequal treatment (compared to nonreligious activities) in six states (California, Nevada, Virginia, Maine, New Jersey, and Connecticut).<sup>5</sup> Another 13 states and Washington, D.C. have restrictions that limit churches' ability to gather for worship or other religious activities but that are facially equal to the restrictions on comparable secular activities.

Many of these restrictions are likely unconstitutional under the First Amendment's Free Exercise Clause, which generally bars government from discriminating against religious entities in its policies and practices. For example, for months Nevada churches – regardless of size – were prohibited from admitting more than 50 people while casinos could admit 50 percent of their maximum occupancy, allowing thousands of people inside. On October 1, Nevada Governor Steve Sisolak raised the state's limit on most gatherings to 250 people or 50 percent capacity, whichever is less.<sup>6</sup> However, casinos are still permitted to operate at 50 percent capacity with no cap on the number of patrons allowed inside.

Over the summer, one Nevada church, Calvary Chapel Dayton Valley, sued the state but was denied injunctive relief by the U.S. Supreme Court in a 5-4 decision.<sup>7</sup> In his dissent, Justice Neil Gorsuch quipped, "In Nevada, it seems, it is better to be in entertainment than religion." Justice Brett Kavanaugh, also in dissent, added, "COVID-19 is not a blank check for a State to discriminate against religious people, religious organizations, and religious services."

Restrictions in California are particularly complicated and onerous. Each county is classified under one of four tiers.<sup>8</sup> "Each tier has a corresponding color that indicates the county's coronavirus risk level, which is determined by the number of new coronavirus cases per day and the percentage of positive tests."<sup>9</sup> Purple counties have a "widespread" risk level, red counties have a "substantial" risk level, orange counties have a "moderate" risk level, and yellow counties have a "minimal" risk level. In the 18 counties classified under the purple tier, churches are not allowed to hold indoor services. Churches in red counties may hold indoor services, but they must limit attendance to 25 percent of building capacity or 100 people. Churches in orange counties may also hold indoor services but must limit attendance to 50 percent of building capacity or 200 people. Churches in yellow counties have the most freedom, but they are still forbidden from admitting more than 50 percent of building capacity. As of July 29, California churches have been ordered to "discontinue indoor singing."<sup>10</sup> At the time, the same prohibition on chanting and singing did not extend to secular activities hosted indoors, including daycare centers, entertainment, schools, music, television and film production, and, most notably, public protests.<sup>11</sup> In fact, Governor Newsom at one point refused to ban protesters from chanting or singing, despite the risks posed by large gatherings in confined spaces.<sup>12</sup> Later, the state's COVID-19 website stated that the ban on singing and chanting also applied to indoor protests but threatened enforcement action only for failing to maintain adequate social distancing.<sup>13</sup> As of October 5, 2020, under the heading "Can I engage in political protest gatherings?", the website stated that singing and chanting must be discontinued at indoor protests and threatened enforcement action for noncompliance.<sup>14</sup>

Restrictions like those imposed on churches in California, Nevada, and elsewhere are even more problematic because the First Amendment gives religion a "privileged status" due to the societal good it provides and out of respect for the conscience of the citizenry. In his legal commentary regarding the First Amendment, Justice Joseph Story wrote, "It is the especial duty of government to foster, and encourage [religion] among all citizens and subjects."<sup>15</sup> The government is not to curtail religious exercise unless it demonstrates a compelling interest in doing so, and even then, the curtailment must occur in the narrowest way possible. This strong standard is in place in part because religion is something the American Founders knew ought to be safeguarded. Religion undergirds our nation and

provides a vibrancy that must be preserved. Simply put, the First Amendment puts religious activity in a special category and requires that it be protected.

As Justice Kavanaugh noted in the recent *Calvary Chapel* case, even in a pandemic, the U.S. Constitution does not allow casinos to receive privileged treatment over churches.<sup>16</sup> As Kavanaugh explained, unlike gambling, the free exercise of religion is explicitly protected by the Constitution, and state laws that reflect “an implicit judgment that for-profit assemblies are important and religious gatherings are less so,” violate the Constitution. In America, religious liberty is often referred to as our “first freedom” because it is foundational to our other freedoms. Craps and poker simply do not merit the same protection.

## **Key Examples of Unequal Treatment of Churches in California**

Unfortunately, particularly in California, instances of churches being treated unequally are not isolated situations. For example, Harvest Rock Church in Pasadena, California incurred the wrath of local officials when they decided to reopen for worship in July. After a judge declined to grant Harvest Rock an injunction, the church received a letter on August 13 from a city attorney demanding the cessation of all in-person worship services. The letter explained that if the church continued holding indoor gatherings, church owners, staff, and parishioners would be “subject to criminal penalties [i.e., fines], as well as the closure of the church.”<sup>17</sup>

On October 1, a divided panel of the 9th Circuit Court of Appeals refused to block California Governor Gavin Newsom’s executive order restricting in-person worship.<sup>18</sup> The panel voted 2-1 to deny an emergency motion filed by Harvest Rock Church to block Newsom’s order. Writing in dissent, Judge Diarmuid O’Scainnlain noted: “At present [October 1], in 18 counties in California – home to more than 15 million residents and including its most populous county, Los Angeles – indoor religious worship services are completely prohibited.”<sup>19</sup>

Before the 9th Circuit’s decision, Senior Pastor Ché Ahn and other church leaders already faced the possibility of fines and up to one year in jail for holding services.<sup>20</sup> Worth noting is that Harvest Rock asks attendees to follow guidelines including social distancing, wearing a mask “when entering and exiting the auditorium,” and staying home if they are at risk or are experiencing flu-like symptoms.<sup>21</sup>

Another California church facing pressure from officials is Godspcak Calvary Chapel. On August 21, Pastor McCoy appeared before the Superior Court of Ventura County and was held in contempt of court for defying the local ban on indoor worship services.<sup>22</sup> Additionally, the church was fined \$3,000 for holding six church services in defiance of local lockdown orders.<sup>23</sup> Despite the fines, the church continues to gather for indoor worship. According to Pastor McCoy, gathering for worship is a matter of religious liberty, and it is unfair for some businesses to be allowed to reopen while churches are forced to hold meetings outside.<sup>24</sup>

One more notable example in California is Pastor Jack Trieber who leads North Valley Baptist Church. North Valley began holding services in August and was subsequently fined \$5,000 for every service it held with additional fines being issued for singing, leading to an eventual \$112,000 in fines.<sup>25</sup> A cease and desist letter posted on the front door of the church demanded that the church immediately stop holding services and acknowledged that agents had been sent into the church to observe the congregation.<sup>26</sup> After a weeks-long legal battle, Pastor Trieber decided to move worship services to the church parking lot.<sup>27</sup> Although Trieber has asked that the county remove all fines, the county has said that it will not forgive the fines it imposed on North Valley Baptist Church.<sup>28</sup>

California is not the only state where churches are being treated unequally due to coronavirus restrictions. Around the nation, churches are being fined or subjected to other adverse action at the hands of government authorities. Following is a comprehensive list of churches subjected to action by either state or local authorities, grouped by state (and the District of Columbia).

## Full List of Churches Subjected to Adverse Action by Government Authorities Due to Coronavirus Restrictions

### 1. CALIFORNIA

- a. Cross Culture Christian Center (Lodi)
  - In March, police showed up at the church at a Wednesday night service to inform the pastor about state and local restrictions on public gatherings, but it does not appear that they threatened to stop the service.<sup>29</sup>
  - In April, however, police posted a notice on the church door ordering the church's landlord to close the church and shut down its parking lot. The letter threatened fines and imprisonment for continuing to violate gathering restrictions. In response to the letter, the church's landlord, Bethel Open Bible Church, changed the locks on the doors to keep Cross Culture Christian Center from meeting. Police showed up on the following Sunday to prevent the church from meeting.<sup>30</sup>
- b. South Bay United Pentecostal Church (San Diego)
  - In May, the United States Supreme Court rejected South Bay Pentecostal Church's emergency appeal challenging restrictions that limited in-person worship services to 25 percent of the building's capacity or a maximum of 100 people.<sup>31</sup> Justice Kavanaugh, joined by Justices Gorsuch and Thomas, dissented, arguing that California's restrictions on churches violated the First Amendment. Justice Alito also dissented, although he did not join Justice Kavanaugh's opinion.
- c. Iglesia De Jesus Cristo (Merced)
  - On Easter Sunday, police arrived at the church, where 50 to 60 people were attending an indoor service.<sup>32</sup> Pastor Fernando Aguas was given a citation, could be required to pay a \$1,000 fine, and could face jail time of up to six months.<sup>33</sup>
- d. Church Unlimited (Indio)
  - "James Moffatt, senior pastor at Church Unlimited in Indio, was fined \$1,000 for violating Riverside County's order by holding a Palm Sunday service."<sup>34</sup>
  - The church filed a lawsuit against the governor in April in a case known as *Gish v. Newsom*.<sup>35</sup>
- e. All Nations Church of God in Christ (Richmond)
  - Pastor Wyndford Williams received a misdemeanor citation for holding an in-person service at his church on Easter Sunday with approximately 40 people. He reported that he could face up to six months in jail or be forced to pay a \$1,000 fine.<sup>36</sup>
- f. Lighthouse Baptist Church (Lemon Grove)
  - In mid-July, the church received a "strongly worded" notice from the San Diego County Public Health Officer stating that failure to observe public health orders by

holding indoor services “may result in criminal misdemeanor citations with a \$1,000 fine for each violation.”<sup>37</sup>

g. Skyline Church (La Mesa)

- In July, Skyline Church received a nearly identical notice to the one received by Lighthouse Baptist Church. The notice warned that continuing to hold indoor services “may result in criminal misdemeanor citations with a \$1,000 fine for each violation.”<sup>38</sup>

h. Awaken Church (San Diego)

- On July 17, 2020, Awaken Church received a cease and desist order for holding an indoor worship service. Like Skyline Church and Lighthouse Baptist Church, it was warned that it could face a \$1,000 fine for every violation.<sup>39</sup>

i. In late August through September, Los Angeles County issued “more than 70 citations to businesses and local churches for not complying with [Health Officer Orders] in the past month, officials said.”<sup>40</sup> Several churches have received citations,<sup>41</sup> including:

- Shepherd Church, Porter Ranch (8/29, 9/5, 9/12, 9/19)
- Shepherd Church, Woodland Hills (8/30, 9/6, 9/13, 9/20, 9/27)
- Grace Community Church, Sun Valley (8/30, 9/6, 9/12, 9/13, 9/20, 9/27)
- Calvary Chapel Sun Valley (8/30)
- Calvary Chapel of Downey (8/30, 9/6, 9/13, 9/20, 9/27)
- Iglesia Del Dios Vivo, Lancaster (8/30)
- Shepherd Church Agua Dulce (8/30, 9/6, 9/13, 9/26)
- Lancaster Baptist Church (9/20, 9/27)
- Iglesia Pentecostes Mas Que Vencedores, Los Angeles (9/27)
- City of Lights Church, Burbank (9/27)

j. Burfitt v. Newsom (Kern, San Diego, San Bernardino, and Los Angeles County)

- On September 29, attorneys from the Thomas More Society filed a lawsuit on behalf of Father Trevor Burfitt, a Catholic priest who oversees several mission churches in Kern, San Diego, San Bernardino, and Los Angeles Counties. Father Burfitt alleged that Governor Newsom’s lockdown measures, such as the ban on indoor worship services in some counties and the restrictions on church attendance in others, “have ‘radically and severely restricted’ his ministry.”<sup>42</sup>

## 2. IDAHO

a. Idaho does not have any prohibitions on in-person worship.<sup>43</sup>

b. Christ Church (Moscow)

- In September, five individuals were given citations for violating a mask/social distancing order at a “psalm sing” event hosted by the church in the parking lot outside City Hall.<sup>44</sup>
- Two of these individuals were arrested for resisting an officer, and one was arrested for refusing to provide identification to police.

## 3. ILLINOIS

a. Elim Romanian Pentecostal Church (Chicago)

- Chicago Mayor Lori Lightfoot blocked off several blocks around the church to prevent people from parking there.<sup>45</sup>

- Then she sent police to prevent people from parking in the parking lot for Sunday night services.<sup>46</sup>
  - The church was fined \$500 in May for holding in-person services.<sup>47</sup>
  - It was also threatened with summary abatement, which means that the City could seize and tear down the church building to stop the “nuisance.”<sup>48</sup>
  - Per Liberty Council’s website, this case will be the first one to go to the United States Supreme Court for a hearing on the merits.<sup>49</sup>
- b. Metro Praise International Church (Chicago)
- The church was fined \$500 in May for holding services.<sup>50</sup>
- c. Philadelphia Romanian Church (Chicago)
- This church was also fined \$500 in May for holding services with more than 10 people.<sup>51</sup>
- d. Logos Baptist Ministries (Niles)
- In September, four charges for “disorderly conduct” were dropped against pastor Daniel Chiu. Chiu was fined \$800 for holding services.<sup>52</sup>
  - This church is involved in the same lawsuit as Elim Romanian Pentecostal Church.<sup>53</sup>
- e. The Beloved Church (Lena)
- On March 31, the church received a cease and desist order from the Stephenson County Department of Health.<sup>54</sup>
  - In May, police officers counted the number of people in attendance at a service, but they did not interfere.
  - This church is involved in the case *Cassell v. Snyders*, a pending lawsuit that has been appealed to the 7th Circuit.<sup>55</sup>
  - In May, the City of Chicago blocked parking outside churches, and the mayor “warned they could face fines for attending in-person services.”<sup>56</sup>
  - In June, Chicago mayor Lori Lightfoot said that churches could meet with up to 25 percent building capacity, or up to 50 people.<sup>57</sup>

#### 4. INDIANA

- a. The Church of Christ (Hammond)
- In April, police issued a citation when the church held an in-person service. Police asked leaders to disperse the service, and when the leaders refused, police issued the citation.<sup>58</sup>
  - Two church leaders were ultimately given citations.<sup>59</sup>

#### 5. KANSAS

- a. First Baptist Church & Calvary Baptist Church (Dodge City)
- A police officer monitored a service at Calvary Baptist Church on Easter Sunday, April 12.<sup>60</sup>
  - On April 14, Pastor Aaron Harris of Calvary Baptist Church spoke to a sheriff who told him that “he would be subject to criminal enforcement of Governor’s Executive Order 20-18 should his church hold an in-person service the following week in which more than 10 people were sitting in the pews.”<sup>61</sup>

- In May, the lawsuit in which the church was involved was voluntarily dismissed when new executive orders allowed churches to gather for in-person services.<sup>62</sup>

b. Heritage Baptist Church (Lawrence)

- The church held in-person services in April in violation of the governor's order limiting gatherings, including church services, to 10 people. The order was not enforced because it had not been published in the Kansas Register.<sup>63</sup>
- However, the sheriff's office of Douglas County said that it would be enforcing the order, which could lead to criminal misdemeanor charges, jail time, or a fine of up to \$2,500 if churches failed to comply.

## 6. KENTUCKY

a. Maryville Baptist Church (Louisville)

- In April, police gave notices and took license plate numbers of congregants who attended an in-person Easter service. The notice told congregants to observe a 14-day quarantine "or face the threat of 'further enforcement measures.'"<sup>64</sup>
- In July, Kentucky Attorney General Daniel Cameron filed an amicus brief on behalf of the church in its ongoing lawsuit challenging the governor's orders.<sup>65</sup>

b. Tabernacle Baptist Church (Nicholasville)

- In May, a judge granted a temporary restraining order to prevent Governor Andy Beshear from enforcing an order that prevented in-person church services and threatened criminal punishment. The church had been unable to meet due to fear of criminal penalties.<sup>66</sup>
- It does not appear that police prevented the church from meeting or issued any citations in this case.

## 7. MAINE

a. Calvary Chapel of Bangor (Orrington)

- The church was threatened with criminal charges, fines, and imprisonment for resuming indoor services.<sup>67</sup> A press release from Liberty Counsel states: "When Calvary Chapel of Bangor filed its lawsuit in May, the governor's orders permitted no religious gatherings, including parking lot services, and violations carried criminal penalties of up to six months in jail and a \$1,000 fine."<sup>68</sup>

b. Kingdom Life Church (Oakland)

- The church held a worship event on the premises in September 2020. Police arrived at the event to monitor the situation, but they did not take any other action.<sup>69</sup>

## 8. MARYLAND

a. Evangel Cathedral Church (Bowie)

- In March, police interrupted a service of approximately 50 people, but they did not arrest or fine anyone.<sup>70</sup>

b. Friendship Baptist Church (Baltimore)

- Police monitored the number of attendees at a Palm Sunday service, but they did not disrupt the service.<sup>71</sup>

- The previous week, police arrived during the benediction and told the pastor that he was violating the governor's orders.<sup>72</sup>

## 9. MASSACHUSETTS

- a. Iglesia Pentecostal Levantate y Anda (New Bedford)
  - The church was fined \$1,800 "after an isolated outbreak of the coronavirus was traced back to the church."<sup>73</sup>
- b. Adams Square Baptist Church (Worcester)
  - Pastor Kristopher D. Casey was fined \$300 for holding church services with more than 10 people for two consecutive Sundays.<sup>74</sup>
- c. Victory Baptist Church (Dedham)
  - In May, the church received a cease and desist letter merely for advertising that it would hold services of no more than 10 people, which was allowed under the governor's stay-at-home orders.<sup>75</sup>

## 10. MINNESOTA

- a. Cornerstone Church (Alexandria)
  - In August, Cornerstone Church, along with Land of Promise Church (Buffalo) and Lifespring Church (Crosby) sued Governor Tim Walz over coronavirus restrictions. The lawsuit said that church congregants could be fined \$100 and charged with a misdemeanor for failing to wear a face mask. Pastor Darryl Knappen stated that he could be fined \$25,000 or be sentenced to 90 days in jail for violating the orders.<sup>76</sup>

## 11. MISSISSIPPI

- a. Temple Baptist Church (Greenville)
  - In April, police officers issued \$500 tickets to attendees of the church's drive-in services.<sup>77</sup>
  - In April, the Department of Justice intervened on behalf of the church, filing a statement of interest in which it argued that the City's actions violated the church's First Amendment rights.<sup>78</sup>
- b. First Pentecostal Church of Holly Springs (Holly Springs)
  - On April 12, police officers disrupted the church's Easter service, which was held indoors because of inclement weather, and told the congregants to disperse. Pastor Jerry Waldrop was given a citation for violating the city's stay-at-home order. Officers also disrupted a Bible study on April 22, 2020 and threatened the attendees with criminal citations.<sup>79</sup>
  - In May, the church was burned down in a confirmed act of arson, which was accompanied by a graffiti message in the parking lot that read: "I Bet you stay home now you hypokrits."<sup>80</sup>
- c. King James Bible Baptist Church (Greenville)
  - In April, congregants were fined \$500 for attending a drive-in service.<sup>81</sup>
  - Congregants were also told they could go to jail, and the pastor was told that because of the stay-at-home orders, his rights were "suspended."<sup>82</sup>



## 12. MISSOURI

- a. Hopewell Missionary Baptist Church (St. Louis)
  - In March, the church was given a citation and civil summons for holding a service of more than 10 people in violation of a local order.<sup>83</sup>
- b. St. John Church of God in Christ (St. Louis)
  - Like Hopewell Missionary Baptist Church, in March, the church was given a citation and civil summons for holding a service of more than 10 people in violation of a local order.<sup>84</sup>

## 13. NEVADA

- a. Calvary Chapel Dayton Valley (Dayton)
  - In July, the church filed an application for injunctive relief at the United States Supreme Court, but its application was denied.<sup>85</sup> The Court did not give an opinion stating its reasons for denial. Justices Alito, Gorsuch, Thomas, and Kavanaugh dissented. No one was fined and the church was not disrupted by police.

## 14. NEW JERSEY

- a. Centro Internacional Para La Familia (Dover)
  - In early May, the church “was cited for holding services with more than 50 parishioners.” Officers arrived at the service, spoke with the pastor, and gave him two citations “for breaking Gov. Phil Murphy’s Executive Order 107 and aiding and abetting the state’s order to limit gatherings to less than 10.” The church had received a warning on April 12.<sup>86</sup>
- b. Bible Baptist Church (Clementon)
  - Police arrived at an in-person service in May. Police told them that they were violating the shutdown order but told them to “have a good night.”<sup>87</sup>
- c. Solid Rock Baptist Church (Berlin)
  - In May, “Police Chief Millard Wilkinson confirmed Solid Rock Baptist Church was facing two disorderly persons citations, for violating the governor’s directive by still holding two indoor services.”<sup>88</sup>
- d. Congregation Premishlan Synagogue (Lakewood)
  - In early April, police cars arrived at the synagogue. They turned on overhead lights, and to avoid a confrontation, the congregants left to hold the service elsewhere.<sup>89</sup>
  - Later in April, police arrived at a backyard service, causing the congregants to scatter. Police stopped the prayer ceremony, which requires 10 men.
  - In May, Rabbi Knopfler “was arrested and charged with resisting arrest, obstructing the law and violating Gov. Phil Murphy’s executive order.”<sup>90</sup>
- e. Saint Anthony of Padua Church (North Caldwell)
  - On March 20, 2020, a police officer arrived at the church and demanded that Mass be cancelled and that the congregants disperse, even though the governor’s executive order did not go into effect until the next day. The police officer eventually backed down after being told by the police chief that the relevant executive order did not go into effect until the following day.<sup>91</sup>

- Father Kevin Robinson cancelled Mass after being told by the North Caldwell police chief that “charges would be filed for violating Order 107.”<sup>92</sup>
- Both Rabbi Knopler and Father Robinson are involved in an ongoing lawsuit challenging the governor’s executive orders.<sup>93</sup>

## 15. NEW YORK

- Roman Catholic Diocese of Brooklyn & Agudath Israel of America
  - In late September, both groups filed lawsuits challenging New York Governor Andrew Cuomo’s recent executive orders limiting attendance in places of worship on the grounds that the orders violate their right to free exercise of religion.<sup>94</sup>
  - Other groups that joined Agudath Israel of America’s lawsuit were “Agudath Israel of Kew Garden Hills, Agudath Israel of Bayswater, Congregation Zichron Moshe Dov, Rabbi Yisroel Reisman, Rabbi Menachem Feifer, Rabbi Aaron Stein and Steven Saphirstein.”<sup>95</sup>
- Central Bible Baptist Church (Massena)
  - The church received a cease-and-desist order from police after holding a drive-in service in May.<sup>96</sup>
- In March, New York City Mayor Bill de Blasio warned churches that if they attempted to hold services, police officers “[would] have no choice but to shut down those services.” He threatened churches with “action up to the point of fines and potentially closing the building permanently.”<sup>97</sup>

## 16. OKLAHOMA

- Common Ground Church (Tulsa)
  - In March, the church was told by police that it could not hold a drive-in service.<sup>98</sup>

## 17. OREGON

- Edgewater Christian Fellowship (Grants Pass)
  - Along with pastors at Roseburg Church of God of Prophecy, pastors at the church had faced of \$1,250 and jail time of up to 30 days for holding services with more than 25 people. Both churches are involved in a pending lawsuit.<sup>99</sup>

## 18. TENNESSEE

- Metropolitan Tabernacle Church (Chattanooga)
  - The church was represented by Alliance Defending Freedom in a lawsuit challenging Mayor Andrew Berke’s orders that prevented drive-in services.<sup>100</sup> No adverse action was taken against the church, such as fines or charges, although the church’s complaint alleged that “the City threaten[ed] the church with potential fines and penalties if they [held] a drive-in service.”<sup>101</sup> The case was voluntarily dismissed after the prohibition on drive-in services was dropped.

## 19. VIRGINIA

- Lighthouse Fellowship Church (Chincoteague)
  - In early April, Pastor Kevin Wilson was threatened with jail time or a fine of \$2,500 for holding an in-person service of 16 people on Palm Sunday.<sup>102</sup>
  - The pastor and congregants were told that if they came to church the next week on Easter Sunday they would be criminally charged.<sup>103</sup>

- Police cars were sent to the church parking lot to discourage attendance.<sup>104</sup>
- The church’s motion for a temporary restraining order was granted in April, and the order stated: “[O]fficials in the Commonwealth threatened to impose similar criminal sanctions on Lighthouse, its pastor, and each and every member and/or attendee who dared visit the Lighthouse Fellowship Church’s service on Easter Sunday or any other worship service held while Governor Northam’s orders are in effect. Additionally, the Virginia State Police – acting under the direction of Governor Northam’s orders – have publicly declared that they would enforce the Governor’s orders and have threatened to impose criminal sanctions on those found in violation of them.”<sup>105</sup>
- In May, the Department of Justice intervened in support of the pastor.<sup>106</sup>

b. Mt. Gilead Full Gospel International Ministries (Chesterfield)

- In April, the church received a warning from police for holding in-person services with more than 10 people.<sup>107</sup>

## 20. WASHINGTON

a. Christ’s Church of Mt. Spokane (Mead)

- In May, Governor Jay Inslee’s executive order threatened churches with “criminal and civil penalties for meeting and institute[ed] restrictions far more severe than those imposed on cannabis retailers and breweries, according to ADF.”<sup>108</sup>
- In May, the church filed a lawsuit because it does not have the technology or ability to conduct service by livestream.<sup>109</sup> This lawsuit is still pending.<sup>110</sup>

## 21. District of Columbia

a. Capitol Hill Baptist Church (Washington, D.C)

- In September, the church sued Mayor Muriel Bowser to challenge her ban limiting church services to 50 percent of the building’s capacity or up to 100 people, “even if held outdoors and even if worshippers wear masks and practice appropriate social distancing.”<sup>111</sup> Capitol Hill Baptist had applied for a waiver from the ban, but its request was rejected.<sup>112</sup> On October 2, the Department of Justice filed a statement of interest on behalf of the church.<sup>113</sup> In the statement, the DOJ argued that the First Amendment and the Religious Freedom Restoration Act (“RFRA”) require that the church be allowed to hold outdoor services to the same extent that other activities protected by the First Amendment, including peaceful protests, are allowed.<sup>114</sup>

While the above list contains examples of action by authorities against churches nationwide, since the beginning of the pandemic, many of these churches, along with several others, have been involved in lawsuits challenging overreaching government orders. Many of these churches have so far been unsuccessful.<sup>115</sup>

## Theological Considerations: The Christian Response to Religious Liberty Violations

Considering the overwhelming evidence that churches around the country have been subjected to unequal treatment, how should Christians respond? Is there a proper Christian response to what appears to be blatant religious discrimination and an unjust usurpation of authority by several states? Although

Scripture teaches that government is a legitimate, God-ordained authority, is there a different calculus that pastors and church leaders need to make if it is clear the government has transgressed its constitutionally and divinely prescribed authority?

In a word, yes. In Romans 13, Paul teaches that the governing authorities are responsible for maintaining societal order and keeping the peace. However, God has not granted the government jurisdiction over the doctrine, liturgy, or practice of the church; pastors and elders, not magistrates, have been entrusted with this authority. In fact, there is biblical precedent for not obeying rulers who overstep their authority. When the corrupt religious authorities in Jerusalem ordered the apostles to stop preaching, Peter responded, “We must obey God rather than men” (Acts 5:29). Christians should honor the governing authorities as long as they are operating within their God-ordained role, but if the government is defying this higher authority by imposing unconstitutional requirements on churches that want to reopen, pastors should seriously consider moving forward with plans to reopen their churches as safely as possible.

Obviously, churches that reopen contrary to government mandates and edicts should carefully consider the consequences of their actions, and pastors ought to continually assess their responsibility to abide by reasonable requests from government officials and the situation in their community. But ultimately, barring a compelling reason, churches should seek to reopen responsibly. Church is essential, and pastors bear a responsibility to shepherd their people well. For many churches that means returning to regular meetings that abide by reasonable health and safety precautions.

The roles of the church and state are complicated by the unique circumstances of a global pandemic. However, nine months into the pandemic, we are faced with another type of health crisis. Experts are now warning of a mental health crisis due to the fear and anxiety sparked by the virus. According to preliminary data, depression, substance abuse, PTSD, drug overdoses, and suicide are all on the rise.<sup>116</sup> A phenomenon that health experts refer to as a “shadow pandemic” is following the virus, manifesting itself in a variety of serious mental health concerns. For example, in Fresno, California, suicides were 70 percent higher in June this year compared to last year.<sup>117</sup> According to the medical examiner’s office in Cook County (Chicago area), there have already been 58 suicides this year compared to 56 for all last year. And finally, the National Alliance on Mental Illness HelpLine has seen a 65 percent increase in calls and emails since March. Mental health experts have cited economic stress, social isolation, and, importantly, reduced access to church and worship services as factors driving this trend.<sup>118</sup> Loving one’s neighbor requires that we also take into account these developments. Considering these factors, it is very reasonable to question whether the state and local governments truly have a compelling interest to restrict religious gatherings in the way they have.

## **How to Safely Reopen Your Church**

Each church should ask themselves: What are the spiritual and practical consequences of remaining closed? What is the cost of reopening only a fraction of our outreaches and ministries?

Of course, in places where the virus has inflicted significant damage, churches should be wise and exercise good judgment. But most churches likely should move toward reopening, with safety precautions in place. This is true in states like California and Nevada, where churches appear to have been treated poorly with no justifiable reason. Churches within these states should continue to press their case – both at the local level and with the Department of Justice – that their constitutional rights are being violated. As noted, this approach has paid dividends for some churches such as Capitol Hill Baptist Church, which has received support in court from the DOJ.

Constitutionally and theologically, churches have the right to continue the work they have been called to do. It is critical to our democracy that the government recognize and proactively protect the vital role religion plays in society. The pandemic does not alter this principle. As demonstrated by the mental health epidemic, the need for the spiritual support of the church is only enhanced in the coronavirus era. It seems increasingly clear that by not opening, congregations and communities are at risk from other maladies besides the coronavirus.

Finally, safely reopening churches will require pastors and church leaders to exercise courage and faith, especially in areas where government officials have demonstrated hostility toward them. But Scripture reminds us that it is precisely for these moments that God gave us a spirit not of fear but of power and love and self-control (2 Tim. 1:7).

To help churches safely reopen, earlier this year Family Research Council released a resource titled “Guidelines for Reopening Your Church,”<sup>119</sup> which outlines the best sanitation practices advised by the CDC. It also provides guidance on other precautions churches can take, such as providing masks for those who attend services, ways to hygienically collect tithes and offerings, tips for administering the ordinances such as the Lord’s Supper, ideas for seating configurations, and ways pastors can set the tone for their congregations.

May we strive to let the church be the church and reopen safely – but reopen soon.

*David Closson, M.Div., is the Director of Christian Ethics and Biblical Worldview at Family Research Council.*

*Kaitlyn Shepherd is a legal intern with the Policy & Government Affairs Department at Family Research Council.*

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