

## Pushing Back Against Threats to First Amendment Rights

A Life Site News article reports,<sup>1</sup> "California's guidelines for 'Places of Worship and Providers of Religious Services and Cultural Ceremonies,' issued by the state government on May 25, stated,<sup>2</sup> 'Places of worship must ... limit attendance to 25% of building capacity or a maximum of 100 attendees, whichever is lower.'"

Unfortunately, Chief Justice John Roberts sided with the 4 reliably liberal justices on the bench to produce a 5-4 ruling that upheld the state's guidelines. Chief Justice Roberts wrote<sup>3</sup> in his concurring opinion that the state's reopening regulation "exempts or treats more leniently only dissimilar activities, such as operating grocery stores, banks, and laundromats, in which people neither congregate in large groups nor remain in close proximity for extended periods."

Yet Kelly Shackelford of the First Liberty Institute<sup>4</sup> disagreed. He said,<sup>5</sup> "Treating churches unequally is wrong. The Constitution specifically protects the free exercise of religion, it does not speak for the defense of laundromats. Churches and houses of worship just want to be treated equally and trusted to adhere to proper social distancing and hygiene practices just like they do when they go about the rest of their daily lives in permitted social settings."

The guidelines had been challenged by a California church, and the case received a Supreme Court ruling May 29, 2020. Keep in mind this point from Alliance Defending Freedom's<sup>6</sup> Ryan Tucker, who said,<sup>7</sup> "The church in this case—and, indeed, the vast majority of churches—agreed to abide by the same social distancing and hygiene standards

set for others. The church simply asked to be treated the same as comparable secular businesses, which is the bare minimum that the First Amendment's free exercise clause requires. The court's opinion is not the final word on the issue. We fully expect other cases where our fundamental freedoms are at stake to make their way back to the Supreme Court on a more fully developed record."

*The Fresno Bee* reported<sup>8</sup> that one church in downtown Fresno—Cornerstone Church<sup>9</sup>—defied the order, even though the church took great care to implement strict social distancing guidelines. It opened its doors to 350 people on Sunday, May 31, in each of two services. That number represents about 25 percent of the capacity of the theatre in which it meets.

Justice Roberts knows better than to rule as he did. In *Obergefell v. Hodges*, the ruling that authorized same-sex marriage nationwide, Justice Roberts said this<sup>10</sup> in his dissenting opinion: "[T]his Court is not a legislature. Whether same-sex marriage is a good idea should be of no concern to us. Under the Constitution, judges have power to say what the law is, not what it should be. The people who ratified the Constitution authorized courts to exercise 'neither force nor will but merely judgment.'"

Yet Roberts is and was all too content with allowing the governor of California to make arbitrary laws in this case (he's not a legislator, either), and with engaging in his own form of lawmaking when he upheld Governor Newsom's policy.

### NOTES:

<sup>1</sup>Life Site News, "Supreme Court's chief justice joins liberals in upholding California church restrictions" — <https://bit.ly/2XVijAL>

<sup>2</sup>State of California, "COVID-19 INDUSTRY GUIDANCE: Places of Religious Worship and Providers of Religious Services and Cultural Ceremonies" — <https://bit.ly/2U6b69s>

<sup>3</sup>Life Site News article — <https://bit.ly/2XVijAL>

<sup>4</sup>[www.firstliberty.org](http://www.firstliberty.org)

<sup>5</sup>CBN News, "In 5-4 Decision, Supreme Court Dismisses California Church's Appeal to End Restrictions on Religious Services" — <https://bit.ly/2Mp8fEE>

<sup>6</sup>[www.adflegal.org](http://www.adflegal.org)

<sup>7</sup>Alliance Defending Freedom — US Supreme Court denies interim relief to South Bay United Pentecostal Church — <https://bit.ly/2zMPBnv>

<sup>8</sup>Bethany Clough, "I want to go to church: Fresno church defies health orders with singing and a crowd," *The Fresno Bee*, May 31, 2020 — <https://bit.ly/2XOPFuM>

<sup>9</sup>[www.cornerstonefresno.com](http://www.cornerstonefresno.com)

<sup>10</sup>Chief Justice John Roberts, in his dissenting opinion in *Obergefell vs. Hodges* — <https://bit.ly/2XqICt3>