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If New York protests OK amid coronavirus, so is outdoor worship, federal judge rules

By Carl Campanile

5-6 minutes

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Upstate Rev. Steven Soos was among the priests who argued that state leaders "exploited" the pandemic to create "a veritable dictatorship" with lockdown rules. Vox Catholica

A federal judge ruled Friday that it was illegal for Gov. Andrew Cuomo and Mayor Bill de Blasio to limit religious worship services over the coronavirus while [condoning and encouraging](#) mass anti-police brutality protests.

“It is not the judiciary’s role to second guess the likes of Gov. Cuomo or Mayor de Blasio when it comes to decisions they make in such troubling times, that is, until those decisions result in the curtailment of fundamental rights without compelling justification,” Northern District federal Judge Gary Sharpe wrote in a 38-page decision.

Sharpe issued a preliminary injunction barring Cuomo, state Attorney General Letitia James and de Blasio from ordering or enforcing COVID-19 restrictions on outdoor religious worship gatherings.

In stinging language, Sharpe dressed down Cuomo and de Blasio for giving “preferential treatment” to thousands of protesters marching in close quarters in the streets — clearly violating social-distancing rules to curb COVID-19 — while aggressively enforcing limitations on religious gatherings.

“Governor Cuomo and Mayor de Blasio could have just as easily discouraged protests, short of condemning their message, in the name of public health and exercised discretion to suspend enforcement for public safety reasons instead of encouraging what they knew was a flagrant disregard of the outdoor limits and social distancing rules,” wrote Sharpe.

“They could have also been silent. But by acting as they did, Governor Cuomo and Mayor de Blasio sent a clear message

that mass protests are deserving of preferential treatment.”

Sharpe also said faith-based New Yorkers and their religious institutions free speech rights were trampled upon by social-distancing rules set by the state that were more severe than for secular businesses.

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He noted that offices, retail stores, salons and restaurants are now permitted to open at 50 percent capacity indoors — double the 25 percent indoor limits imposed on churches and synagogues.

“These secular businesses/activities threaten defendants’ interest in slowing the spread of COVID-19 to a similar or greater degree than those of plaintiffs’, and demonstrate that the 25% indoor capacity limitation on houses of worship is underinclusive and triggers strict scrutiny review,” Sharpe wrote.

The case was [recently brought by](#) two Catholic priests and a trio of Orthodox Jews, who sued de Blasio, Cuomo and James — accusing them of an “unprecedented abuse of power” in shuttering houses of worship while supporting mass protests.

Upstate priests Rev. Steven Soos and Rev. Nicholas Stamos and Brooklyn Jewish congregants Elchanan Perr, Daniel Schonborn and Mayer Mayerfeld argued New York’s leaders “exploited the COVID-19 pandemic” to create “a veritable dictatorship” with their lockdown rules.

And the judge pointed to another example in Cuomo’s orders — allowing 150 people to gather for school graduations.

“This is an express exemption from the 10- or 25-person outdoor limits that apply to other situations,” he wrote, adding, “There is nothing materially different about a graduation ceremony and a religious gathering such that defendants’ justifications for a difference in treatment can be found compelling.”

The plaintiffs hailed the ruling as a victory for religious freedom.

“We are pleased that Judge Sharpe was able to see through the sham of Gov. Cuomo’s ‘Social Distancing Protocol’ which went right out the window as soon as he and Mayor de Blasio saw a mass protest movement they favored taking to the streets by the thousands,” said plaintiffs’ lawyer Christopher Ferrara, special counsel to the Thomas More Society.

“Suddenly, the limit on ‘mass gatherings’ was no longer necessary to ‘save lives.’ Yet they were continuing to ban high school graduations and other outdoor gatherings exceeding a mere 25 people. This decision is an important step toward inhibiting the suddenly emerging trend of exercising absolute monarchy on pretext of public health. What this kind of regime really meant in practice is freedom for me, but not for thee.”

A Cuomo spokesman said the governor was reviewing the decision.