



## SUPREME COURT DECISION

Assemblies of God General Council General Legal Counsel Richard Hammar just released his analysis of last Friday's US Supreme Court decision.

### WHAT THIS DEVELOPMENT MEANS FOR CHURCHES

What is the practical relevance of this case to churches? Consider the following points.

First, the Court's decision means that churches may not be able to look to the courts for assistance when confronted by a state or local law restricting their ability to conduct worship services.

Second, churches can challenge restrictions on attendance that are stricter than those that apply to comparable secular organizations. Comparable organizations would include those that have similar numbers in attendance for similar periods of duration each week, with similar physical interactions. But churches can be subjected to more stringent limitations on attendance if the totality of their interactions with the public are greater than those of other organizations. In this regard, Chief Justice Roberts noted: "The precise question of when restrictions on particular social activities should be lifted during the pandemic is a dynamic and fact-intensive matter subject to reasonable disagreement."

Third, Chief Justice Roberts stressed that "[our] Constitution principally entrusts the safety and the health of the people" to the politically accountable officials of the States "to guard and protect." *Jacobson v. Massachusetts*, 197 U. S. 11, 38 (1905). When those officials "undertake to act in areas fraught with medical and scientific uncertainties," their latitude "must be especially broad," and "where those broad limits are not exceeded, they should not be subject to second-guessing by an unelected federal judiciary, which lacks the background, competence, and expertise to assess public health and is not accountable to the people."

Fourth, Chief Justice Roberts mentioned the *Jacobson* case in support of the Court's decision. In *Jacobson*, the United States Supreme Court rejected a citizen's claim that his liberty was invaded "when the State subjects him to fine or imprisonment for neglecting or refusing to submit to vaccination, and that a compulsory vaccination law is unreasonable, arbitrary and oppressive, and, therefore, hostile to the inherent right of every freeman to care for his own body and health in such way as to him seems best; and that the execution of such a law against one who objects to vaccination, no matter for what reason, is nothing short of an assault upon his person." The Court held:

(I)n every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand.

The Court also held “real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others.” This case suggests, though not conclusively, that safety and health regulations, such as compulsory vaccinations, supersede religious liberty.

Fifth, church leaders that continue to hold worship services in contravention of state or local restrictions must understand that in doing so they are exposing their congregation to possible risks and liability should one or more persons become infected with the COVID-19 virus. These risks include:

- Personal liability of church board members if their decision to ignore government mandates and recommendations is deemed to constitute gross negligence. Most states have enacted laws limiting the liability of church officers and directors. The most common type of statute immunizes uncompensated directors and officers from legal liability for their ordinary negligence committed within the scope of their official duties. These statutes generally provide no protection for “willful and wanton” conduct or “gross negligence”—the same standard typically used as a basis for punitive damages.
- Punitive damages are monetary damages that a jury can award when a defendant’s conduct is grossly negligent or reckless. This does not necessarily mean intentional misconduct. Punitive damages often are associated with reckless conduct or conduct creating a high risk of harm. The United States Supreme Court has noted that the goal of punitive damages is “deterrence and retribution,” that is, “to further a state’s legitimate interests in punishing unlawful conduct and deterring its repetition.” *State Farm Mutual Automobile Insurance Company v. Campbell*, 538 U.S. 408 (2003).
- It is important for church leaders to understand that reckless inattention to risks can lead to punitive damages, and that such damages ordinarily are not covered by a church’s liability insurance policy. This means that a jury award of punitive damages represents a potentially uninsured risk. As a result, church leaders should understand the basis for punitive damages, and avoid behavior that might be viewed as grossly negligent.

To learn more about how federal and state courts decide religious freedom cases, and to understand which states have state RFRA’s or other religious freedom laws, check out the *50-State Religious Freedom Laws Report*, a new downloadable resource from Church Law & Tax.