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RELIGIOUS FREEDOM

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Abstract

The imposed medical safety measures to fight the COVID 19 pandemic imposed several restrictions on the public's everyday life. From lockdowns to vaccines, and everything in between, our nation is struggling to regain normality. The ability to practice religion is at the forefront and is one of the hardest hit due to the COVID 19 response protocol. To lower the spread of the deadly virus, the local and federal governments implement mandates to stop the spread of the virus. One of the most consequential measures was closing religious venues in the name of safety. The COVID 19 pandemic is costly for religious freedom. From the absence of in-person worship to a religiously challenged vaccine, religious liberties are at the forefront of the freedom and liberty debate. What was the impact of the COVID 19 safety protocols on religious freedom? This paper will analyze the effects on religious freedoms during the COVID 19 pandemic and beyond.

Introduction

In the early days of the pandemic, our leaders took drastic measures to protect the public and get the pandemic under control. At the time, the measures seemed valid, and why not? People were dying at an alarming rate; hospitals were overwhelmed with COVID patients, social distancing, continuous masks wearing, beer brewers making hand sanitizer instead of brewing beer, a ventilator shortage, empty grocery shelves, and toilet paper is a hot commodity. The city streets are empty, businesses closed, some for good. An all-out effort to protect America from a deadly enemy that no one could see, but only fight. The house of worship was not immune to the shutdowns and COVID rules. Churches, mosques, temples, and the like, all closed to fight the COVID threat. However, while the ability to gather is forbidden, other organizations, businesses, and events were allowed to remain open. Religious leaders searched for innovative ideas to hold service for the congregation but were not allowed. In some cases, the heads of congregations were arrested. The debate concerning what establishments are considered essential and non-essential brings the faithful to a boiling point. Essential establishments are viewed as political in nature. The arrival of a COVID vaccine brings relief and challenges. The rush to move toward a vaccinated nation is challenge for the pro-life religious community. As the country implements vaccine mandates for federal and state workers, the opposed view the mandate as a violation of their religious

freedom. The purpose of this article is to examine the restrictions on religious freedoms during and after the COVID 19 pandemic.

Limiting Freedoms to Flatten the Curve

The COVID pandemic is reaching its third year and it is hard to remember freedoms and liberties that we enjoyed pre-COVID. The world was vastly different. The economy and stock market were booming. The nation was gearing up for a hotly contested presidential election and wearing face coverings was not a frequent practice. Today, the environment is different. America is struggling to get ahead of the pandemic. The time for action is now; federal and state lawmakers desperately search for measures that will flatten the curve of infections. It is a balancing act of public safety and the preservation of constitutional liberties. Lawmakers are convinced the best avenue of attack to slow the spread of the virus is to keep people away from each other. Unfamiliar terms, such as social distancing become normal vocabulary. Wearing a face covering is essential. Businesses that are not essential for basic needs are closed for an undisclosed time. Americans are laid off from their jobs and no longer have a steady income. For those still employed, working from home over the internet becomes the new office environment. Our schools are shut down. Parents must contend with parenting and teaching math, science, English, and the like. The measures are steep and restrictive. Americans will sacrifice normal daily activities to protect the community. The mitigation measures affect the public harshly.

In the darkest of times, many turn to faith for guidance. The presence of a spiritual savior is comforting and provides many with the strength to endure in the hardest of times. Worship is a time of rest and a time to listen to the teaching of the lord. Practitioners coming together to experience community and gospel is of importance to many faithful. Under the new rules of the pandemic, coming together is not an option. Churches are closed and congregations must practice individually or utilize the internet to attend live streaming services. Many Americans feel the implemented mitigations to slow the spread of the virus violated their fundamental right to practice faith. (Haynes, 2021) notes that right-leaning Christians expressed contentious resentment to pause religious worship to eliminate

the COVID crisis.¹ How could the federal and state government deny a constitutionally protected right? In a post-pandemic world, is religious freedom under attack? Will religious freedoms suffer in a post-pandemic world?

The Pandemic Shutdown for Non-Essential Establishments

In the early days of the pandemic, federal and local officials ordered the closure of non-essential establishments. From the onset of the closures, many citizens questioned the legality of the closures. Are their First Amendment rights being violated? The First Amendment of the Constitution states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.²

If the First Amendment prohibits congress from establishing any law that demands the government respect the religious right of an American citizen to practice the faith of choice, how can elected leaders classify religious establishments as non-essential? Moreover, if the constitution grants every American the right to assemble in the name of the region, all religious establishments must be considered essential. This argument is fundamental and valid. American have the right to assemble for religious purposes as a protected right under the constitution.

As a fundamental, and founding, right, classifying religious establishments as non-essential will require a ruling from the Supreme Court. The high court will have to decide if the elected officials have the right to restrict religious practice. The order to close non-essential businesses did not violate any citizen's First Amendment Right because the supreme court ruled the closure was "culture-neutral" (Goston, 2020)³.

¹Haynes, Jeffrey. "Donald Trump, the Christian Right and COVID-19: The Politics of Religious Freedom." *Laws* 10, no. 1 (Jan 30, 2021): 6. doi:10.3390/laws10010006. <https://search.proquest.com/docview/2519512057>.

² Britannica Educational Publishing Staff, *The U. S. Constitution and Constitutional Law*, ed. Brian Duignan (Chicago, IL: Rosen Publishing Group 2012). <http://ebookcentral.proquest.com/lib/liberty/detail.action?docID=934413>.

³ Gostin, Lawrence O. and Lindsay F. Wiley. "Governmental Public Health Powers during the COVID-19 Pandemic: Stay-at-Home Orders, Business Closures, and Travel Restrictions." *JAMA : The Journal of the American Medical Association* 323, no. 21 (Apr 02, 2020): 2137-2138. doi:10.1001/jama.2020.5460. <http://dx.doi.org/10.1001/jama.2020.5460>.

The decision did not prohibit any citizen from practicing faith and the decision to establish essential and non-essential establishments was in the public interest. The restriction prohibits citizens from gathering in a central location to end the transmission of the virus. The ruling did not prohibit, or order, any citizen to refrain from religious practice or belief. To some, denying access to a religious establishment, in its most simplistic form, is the removal of one's right to practice. However strong the conviction, the high court did not view the closure as a violation; the faithful are compelled to find an alternative method of worship.

In May of 2020, the pandemic is surging. Hospital cases rise daily and the threat of dying from COVID 19 is a reality. The evidence is clear; thousands of Americans are dying due to complications of the virus as health care workers desperately try to save as many people as possible. As noted, the Supreme Court ruled that religious gatherings are prohibited in the name of community safety. The only way to overcome the virus is to avoid large gatherings, support a safe distance, and exercise good hygiene. However, in May, George Floyd died. During an arrest attempt, the responding officer placed his leg across Floyd's neck. Floyd was on his stomach with his hands, handcuffed behind his back. Two more officers aided the responding officer and restrained Floyd's legs. The pressure of the officer's leg restricted Floyd's ability to breathe and Floyd died of suffocation. The local community, and the country, are outraged. Several cities experience massive protests. Large gatherings of people took to the streets to express their anger over Floyd's killing. Many marched in tandem; some took part in acts of violence and destruction of government and private property. "The amount of mental and physical energy that has been exerted by our protesters may not have been possible without the pandemic. The fact that it took a pandemic for protests for racial injustice to gain traction is bittersweet (Maruyama, 2020)⁴. "The protest continues throughout the summer. Thousands of people a day are on the streets expressing their hurt and anguish at the Floyd killing. Political figures take part and announce the protests are peaceful in nature. The news

⁴ Maruyama, Ryo. "Lessons Learned: Patience, Empathy, and Lacking Healthy Distractions during COVID, and Protests for a New Father." *Journal of Prenatal & Perinatal Psychology & Health* 34, no. 6 (Winter, 2020): 523-5, <http://ezproxy.liberty.edu/login?qurl=https%3A%2F%2Fwww.proquest.com%2Fscholarly-journals%2Flessons-learned-patience-empathy-lacking-healthy%2Fdocview%2F2514747650%2Fse-2%3Faccountid%3D12085>.

covers the events and explains the right to protest is a constitutionally protected liberty. "The uprising breaking out in Minnesota quickly spreading throughout the country ruptured the confining shutdown life (Dean 2020, 41-46)."⁵ Is the gathering of thousands of people, in the name of social justice, hold greater importance than the gathering of a hundred people in the name of God? Moreover, the liberties that protect the protestors derive from the same amendment in the constitution that protects the rights of the faithful to worship.

The order to close non-essential business is the focal point of the debate. Non-essential businesses are establishments that do not provide needed goods or provide necessary services, such as healthcare and emergency services (Dennerlein et al., 2020). So, what is an essential business, and what constitutes the need to keep a business open?⁶ To religious practicing citizens, faith is essential. In most states, state governments classified liquor stores and marijuana dispensaries as essential establishments. (Redford & Dills, 2021) notes that Virginia Governor Northem, considered liquor stores and restaurants supplying takeout alcohol drinks, essential status to allow businesses to continue to run and supply employment for Virginians⁷. Provided the right to consume alcohol is constitutional, why is the right to consume alcohol allowed and the right to worship in a congregation prohibited? Why are houses of worship closed and liquor stores open? The answer does not stand with the president nor the federal government, the policy to close religious institutions lies with the state leadership. (Swenson, 2021) notes, the 10th Amendment of the U. S. Constitution grants states the authority to employ police powers for the benefit of the health and general welfare⁸. The states have the power to limit the number of occupants in a gathering, to prevent the spread of the virus. The states implementing gathering restrictions did not execute the measure

⁵ Jodi Dean, "COVID Revolution," *Democratic Theory* 7, no. 2 (2020), 41-46. doi:<http://dx.doi.org/10.3167/dt.2020.070206>. <http://ezproxy.liberty.edu/login?qurl=https%3A%2F%2Fwww.proquest.com%2Fscholarly-journals%2Fcovid-revolution%2Fdocview%2F2524955011%2Fse-2>.

⁶ Jack T. Dennerlein et al., "An Integrative Total Worker Health Framework for Keeping Workers Safe and Healthy during the COVID-19 Pandemic," *Human Factors* 62, no. 5 (Aug, 2020), 689-696. doi:10.1177/0018720820932699. <https://journals.sagepub.com/doi/full/10.1177/0018720820932699>.

⁷ Audrey Redford and Angela K. Dills, "The Political Economy of Drug and Alcohol Regulation during the COVID-19 Pandemic," *Southern Economic Journal* 87, no. 4 (Apr, 2021), 1175-1209. doi:10.1002/soej.12496. <https://onlinelibrary.wiley.com/doi/abs/10.1002/soej.12496>.

⁸ Delaine Russell Swenson, "United States Supreme Court Approach to First Amendment Freedom of Religion in Response to the COVID Pandemic," *Review of European and Comparative Law* 46, no. 3 (Aug 21, 2021), 237-261. doi:10.31743/recl.12707. <https://doaj.org/article/1ea7b3ae5b4c41bea9828122cf298163>.

to limit the public's availability to practice faith but to limit the number of people in a confined area.

In contrast, the number of customers gathered at a recognized essential establishment is not defined. If gatherings of more than 10 or more people are not acceptable, why can larger stores, such as grocery stores, discount stores, and home improvement stores, allow numbers greater than ten people to gather at one time? However, limiting religious establishments to ten people or less, when an essential establishment does not have a capacity requirement, can be a point of contention. Furthermore, practicing religion is not limited to visiting a house of worship. During the pandemic, internet searches for religious prayers on the search engine Google surged to the highest level on record (Bentson 2021, 542)⁹. Citizens of faith can use alternative measures to practice their faith via electronic devices and spiritual literature. Provided technology allows us to connect virtually, it does have its limitations. The use of technology limits human interaction, an open dialog, and a multidirectional conversation between participants (Eidsmoe, 2020, P.28)¹⁰. The lack of interaction between members of faith can limit the experience and degrade participation in the service. Coming together in a house of worship and integrating with community members is an essential aspect of a religious congregation.

Religious Beliefs About Vaccinees

At the end of 2020, an emergency approved vaccinee is available for distribution. President Trump set up Operation Warp Speed and set a goal to manufacture a COVID vaccination by the end of 2020. Operation Warp Speed empowered pharmaceutical companies to develop a vaccine that could put an end to the virus. For some, the discovery of a COVID-19 vaccine is a bright light of hope; a drug that could end the suffering and the world can return to normal. Provided the vaccine was the answer to many who feared the virus, the controversy surrounding the shot led to political and religious objections. Politically, the debate was easy: is the vaccine safe, and did the government allow sufficient testing prior to distribution? Is the quick release of the vaccine a political maneuver that will affect the 2020 Presidential Election that points to the pandemic as the primary

⁹ Jeanet Sinding Bentzen, "In Crisis, we Pray: Religiosity and the COVID-19 Pandemic," *Journal of Economic Behavior & Organization* 192 (Dec, 2021), 541-583. doi:10.1016/j.jebo.2021.10.014. <https://dx.doi.org/10.1016/j.jebo.2021.10.014>.

¹⁰ Stephanie Maher, *Covid's Challenging Invitations*. doi:10.3316/informit.427850304657240.

issue of concern for voters? Lastly, are the manufacturing methods of the vaccine in compliance with religious beliefs? For many, the vaccine is not in compliance with religious beliefs and views a vaccine mandate as a violation of religious liberties.

The manufacturing of the vaccine is at the center of the controversy. Pharmaceutical manufacturers utilized multiple scientific methods to create a version of the vaccine. Some pharmaceutical companies formulated the vaccine with adenovirus technique using HEK-293 cell lines obtained from fetuses after elective abortions (Giubilini, Savulescu, & Wilkinson, 2021)¹¹. For Catholics, prolife belief is extraordinarily strong, and Catholics oppose a vaccine that uses any part of an aborted fetus. For pro-life supporters, the use of an aborted fetus does not align with values of faith. The choice to receive the vaccine is not an easy choice. The belief in life is strong; the vaccine requires the termination of a fetus to manufacture the drug.

The people of faith, who deeply disagree with an injection that violates their religious beliefs, receive intense scrutiny from the vaccinated public. Some religious Faithfuls are adamantly against abortion and must make a choice that best serves their values. In contrast, not all prolife believers object to the vaccine. The Pope received the COVID vaccination and urged all Catholics not to hesitate and to get vaccinated (Giubilini, Savulescu, & Wilkinson, 2021)¹².

The vaccine mandate is a policy set in motion by political leaders at the federal and state level. The vaccinations are free and available to all citizens. In addition, different forms of the vaccine utilize alternative manufacturing methods that do not require the use of cells from an aborted fetus. In all, the option for inoculation without sacrificing religious preference is available through different versions of the vaccine. If the possibility is present, religious liberties are not violated. The need to supply options to accommodate religious considerations moves into the focal point of the discussion. Providers and administrators offer different versions of the vaccine; the choice to receive inoculation, while considering

¹¹ Alberto Giubilini, Julian Savulescu and Dominic Wilkinson, "Which Vaccine? the Cost of Religious Freedom in Vaccination Policy," *Journal of Bioethical Inquiry* 18, no. 4 (Dec 23, 2021), 609-619. doi:10.1007/s11673-021-10148-6. <https://link.springer.com/article/10.1007/s11673-021-10148-6>.

¹² Giubilini, "Which Vaccine? the Cost of Religious Freedom in Vaccination Policy," , 609-619

religious beliefs is available. The mandate imposed by officials does not violate religious freedoms.

Effects of Region Post COVID

The pandemic is reaching its third year. While America has come to grips with the limitations and absence of normality, it is difficult to predict the impact the pandemic had on religious institutions. Did the prolonged periods of isolation, and absence of gathering, disassociate pre-COVID follows from faith? Will religious venues fold due to lack of membership, attendance, and funding? Also, how does church leadership reenergize the faithful to reunite under God in the house of worship? Can we reimagine religious beliefs? Only time can answer the questions above. Religious institutions will feel an impact of the pandemic; it is not out of line to expect a loss in membership; lifestyle changes often push people in a different direction. It is hard for religious institutions to maintain survival if congregation members divert from traditional houses of worship and move toward an electronic alternative (Cho 2021, 14-21).¹³ The possibility is relevant. Throughout the pandemic, several major corporations moved toward electronic work to avoid gathering and have found a financial benefit. If people grow accustomed to working in an electronic environment, will they turn to that environment to practice faith? The outcome could spell disaster for a congregation. Even if the members of the church supported the venue within an online subscription, the costs could be too difficult to overcome and support a healthy congregation.

The physical presence of a community gathering is the backbone of any congregation. Interaction is essential. The need to bring faith to the forefront is more important now than ever.

Conclusions

The measures put forth during the COVID 19 pandemic were put in place to safeguard the public. Political leaders utilized the powers of the federal and state constitution to provide a safe environment while combatting the virus. The aggressive effort to close schools and non-essential businesses provides an opportunity to keep people from gathering, to stop the spread of an airborne virus.

¹³ Anna Cho, "For the Church Community After COVID-19," *Dialog : A Journal of Theology* 60, no. 1 (Mar, 2021), 14-21. doi:10.1111/dial.12642. <https://onlinelibrary.wiley.com/doi/abs/10.1111/dial.12642>.

Religious venues were not targeted: restaurants, bars, nightclubs, sporting events, and the like, all closed to prevent large gatherings. Unlike the venues above, the faithful had an opportunity to practice in the comfort of their home, an option not available to all activities. The determination of what is essential and non-essential is up for debate. The perception that a liquor store is essential, and a house of worship is not, is troubling. However, this perception is a victim of improper messaging. State officials need to be more transparent with the public and address these types of concerns. The lack of messaging opened the door to speculation.

In contrast, the outpouring of protest in May of 2020 does not conform to the ruling of mass gatherings. Thousands of people across the country took part in the protests and were in close contact with each other. Optics are not favorable for a person of faith restricted from entering a house of worship because of the number of people in proximity; however, hundreds of thousands of people are protesting under the same freedom amendment the Supreme Court ruled on prior to May. No conclusion is made to explain the reasoning behind the contradiction. Local and state leadership did not provide any guidance on the matter. Perhaps, leadership believes that freedom of religion and freedom of expression are not of the same importance.

The vaccine mandate does not violate religious freedom. The opportunity to choose a vaccine that does not use cells from aborted fetuses is available. If an alternative option is available, the freedom to choose is available, however inconvenient. To ensure that religious freedoms are taken into consideration, officials must ensure that each vaccine is available, and the patient has the choice of which vaccine supports religious beliefs. The costs associated with buying and storing two different vaccines is cost the state and federal government should assume in the name of religious freedom. It is Unamerican for citizens to assume an added expense in the name of religious freedom.

The constitution of the United States is a powerful document; Each liberty is equally protected. It is important to observe the difference between inconvenience and a violation of one's liberty. The COVID pandemic is an example of that difference. All citizens did, and still do, experience inconveniences due to the pandemic; however, as a country, we must look for alternative ways to regain normalcy and be excellent to each other.

Bibliography

- Bentzen, Jeanet Sinding. "In Crisis, we Pray: Religiosity and the COVID-19 Pandemic." *Journal of Economic Behavior & Organization* 192, (Dec, 2021): 541-583.
doi:10.1016/j.jebo.2021.10.014.
<https://dx.doi.org/10.1016/j.jebo.2021.10.014>.
- Britannica Educational Publishing Staff. *The U. S. Constitution and Constitutional Law*, edited by Duignan, Brian. Chicago, IL: Rosen Publishing Group, 2012.
<http://ebookcentral.proquest.com/lib/liberty/detail.action?docID=934413>.
- Dean, Jodi. "COVID Revolution." *Democratic Theory* 7, no. 2 (2020): 41-46. doi:<http://dx.doi.org/10.3167/dt.2020.070206>.
<http://ezproxy.liberty.edu/login?qurl=https%3A%2F%2Fwww.proquest.com%2Fscholarly-journals%2F covid-revolution%2Fdocview%2F2524955011%2Fse-2>.
- Eidsmoe, J. (2020). Quarantining THE CHURCH? During the COVID-19 lockdowns, churches have had to fight against unjust efforts to close their doors by secular authorities using the "pandemic" to single them out. *New American* (08856540), 36(22), 24-30.
- Giubilini, Alberto, Julian Savulescu, and Dominic Wilkinson. "Which Vaccine? the Cost of Religious Freedom in Vaccination Policy." *Journal of Bioethical Inquiry* 18, no. 4 (Dec 23, 2021): 609-619. doi:10.1007/s11673-021-10148-6.
<https://link.springer.com/article/10.1007/s11673-021-10148-6>.
- Gostin, Lawrence O. and Lindsay F. Wiley. "Governmental Public Health Powers during the COVID-19 Pandemic: Stay-at-Home Orders, Business Closures, and Travel Restrictions." *JAMA : The Journal of the American Medical Association* 323, no. 21 (Apr 02, 2020): 2137-2138. doi:10.1001/jama.2020.5460.
<http://dx.doi.org/10.1001/jama.2020.5460>.
- Maher, Stephanie. *Covid's Challenging Invitations*.
doi:10.3316/informit.427850304657240.
- Maruyama, Sho. "Letter to the Editor." *Journal of the American Institute of Planners* 32, no. 5 (Sep, 1966): 297-298.
doi:10.1080/01944366608978211.

Redford, Audrey and Angela K. Dills. "The Political Economy of Drug and Alcohol Regulation during the COVID-19 Pandemic." *Southern Economic Journal* 87, no. 4 (Apr, 2021): 1175-1209. doi:10.1002/soej.12496. <https://onlinelibrary.wiley.com/doi/abs/10.1002/soej.12496>.

Swenson, Delaine Russell. "United States Supreme Court Approach to First Amendment Freedom of Religion in Response to the COVID Pandemic." *Review of European and Comparative Law* 46, no. 3 (Aug 21, 2021): 237-261. doi:10.31743/recl.12707. <https://doaj.org/article/1ea7b3ae5b4c41bea9828122cf298163>.