



Written by [Bob Adelman](#) on October 11, 2020

Court Slaps D.C. Mayor for Discriminating Against Church

After months of attempting to persuade D.C. Mayor Muriel Bowser (shown) to grant them an exception to her draconian virus-inspired restrictions on in-person meetings by churches, the Capitol Hill Baptist Church (CHBC) [filed suit in September](#).

The church said, “Meeting in-person as one congregation is a deeply-held conviction for which there is no substitute. Our simple desire is to have a community and one that meets together safely.... CHBC has applied for multiple waivers to the policy but District officials refused to provide CHBC with a waiver beyond 100 persons as part of a mass gathering.”



AP Images

On Friday, U.S. District Court Judge Trevor McFadden sided with the church, [issuing a temporary injunction](#) against Bowser’s attempts to enforce her edicts. He wrote:

The Court determines that the Church is likely to succeed in proving that the District’s actions violate RFRA (the Religious Freedom Restoration Act passed in 1993 governing D.C. and other federal districts). The District’s current restrictions substantially burden the Church’s exercise of religion.

In addition,

The District has failed to offer evidence ... showing that it has a compelling interest in preventing the church from meeting outdoors with appropriate precautions, or that its prohibition is the least-restrictive means to achieve its interest.

As a result, “The Court will therefore grant the Church’s motion for injunctive relief.”

The ruling comes in time for the church, headed by Senior Pastor Mike Dever, to hold in-person services on Sunday as it has done for more than 140 years (except for three weeks during the Spanish flu epidemic in 1918).

Bowser banned all indoor and outdoor church gatherings of more than 100 people back in March, and under Phase Two of her recovery plan, the ban would remain in place until a proven COVID vaccine is put in place. The church has recently been meeting in an open field near Del Ray Baptist Church in Alexandria, Virginia.

The suit was brought by First Liberty Institute, a conservative public-interest non-profit law firm, whose lawyer Hiram Gasser said after Friday’s ruling:

As Judge McFadden explained, if D.C. officials have evidence showing that Christians



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gathering together to worship a risen Savior is of greater risk than protests and outdoor movie theaters, the church would gladly consider it. Since none has been provided, to require something of churches that is not required of other First Amendment activities is wrong.

Gasser and First Liberty had some heavy-duty support in their lawsuit. A week before the ruling, the U.S. Department of Justice filed a [“statement of interest”](#) in the case with the court. Eric Dreiband, assistant attorney general for the Civil Rights Division, said, “The right to the free exercise of religion and the right to protest are both enshrined in the First Amendment of the Constitution. We are a nation dedicated to freedom of conscience and freedom of expression. The District of Columbia, unfortunately, neglected these rights.”

In its statement, the DOJ claimed that Bowser was discriminating against churches:

[Her] current approach to COVID-19 limitations has the effect of treating some forms of protected First Amendment activity differently than other forms of comparable activity, and in so doing singles out religious exercise for different treatment.

For evidence, the statement accused Bowser of hypocrisy, pointing out that she attended a large “social justice” protest on June 6 in violation of her own rules, and added that on several other occasions the district failed to enforce the rules on other large gatherings.

Just days before the ruling, 34 Senate Republicans (but no Democrats) [filed an Amicus Brief](#) supporting the church’s position:

Whether viewed as a matter of free speech, the freedom of assembly, or the free exercise of religion protected by the Constitution and RFRA, the result is the same: The Mayor’s discrimination against houses of worship rests on a mistaken, and unconstitutional, premise that one particular exercise of free speech — a church’s desire to gather together and worship their God — is subordinate to other First Amendment-protected activities.

Senator Tom Cotton (D-Ark.) celebrated the ruling, tweeting on Saturday:

The DC District Judge made the right call here. The government can’t shut down churches and then endorse and encourage mass protests and riots by liberals. That’s why I was proud to sign a brief in support of Capitol Hill Baptist Church earlier this week.

Judge McFadden’s ruling is part of a welcome movement by courts to push back against such egregious and discriminatory assaults by states and municipalities on churches and the rights of their members to worship freely.

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