



Written by [Bob Adelman](#) on May 21, 2020

Justice Department Warns California Governor Against Religious Discrimination

[A letter](#) from an assistant attorney general and four U.S. attorneys in California sent on Tuesday warned California Governor Gavin Newsom about discriminating against churches in his shutdown and reopening orders.

Signed by Assistant Attorney General Eric Dreiband, the letter quoted a statement from Attorney General William Barr that “even in times of emergency, when reasonable and temporary restrictions are placed on rights, the First Amendment and federal statutory law prohibit discrimination against religious institutions and religious believers. Thus, government may not impose special restrictions on religious activity that do not also apply to similar nonreligious activity.”

In other words, wrote Dreiband, “There is no pandemic exception to the U.S. Constitution and its Bill of Rights.”

Dreiband then exposed Newsom’s discrimination, which appeared in both his order issued in March shutting down the state and the one he issued in early May setting forth the stages of his reopening plan.

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In his initial shutdown order, issued on March 19, Newsom ordered all Californians to stay at home, except those engaged in “essential” activities. Churches and church-related activities — he called them “faith-based services” — would only be allowed “through streaming or other technologies.” In other words, no in-person church services would be allowed to take place.

But exceptions were granted for “workers supporting the entertainment industries, studios, and other related establishments” along with “workers supporting ecommerce.” This, wrote Dreiband, “facially discriminates against religious exercise.”

More egregious was the blatant discrimination exhibited in Newsom’s reopening order: “Places of worship are not permitted to hold religious worship services until Stage 3. However, in State 2, schools, restaurants, factories, offices, shopping malls, swap meets, and others are permitted to operate.”

Dreiband warned:

The Department of Justice does not seek to dictate how States such as California determine what degree of activity and personal interaction should be allowed to protect the safety of their citizens. However, we are charged with upholding the Constitution and federal statutory protections for civil rights. Whichever level of restrictions you adopt, these civil rights protections mandate equal





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treatment of persons and activities of a secular and religious nature....

We believe ... that the Constitution calls for California to do more to accommodate religious worship.

Later that day, Dreiband said, "When the pandemic is over, we do not want to look back on this period of time and think that we allowed [state or local] governments to take actions [that] violate our constitutional and civil rights."

But, according to former New Jersey Superior Court Judge Andrew Napolitano, they already are, and Dreiband's gentle chiding of Newsom falls far short of what the Constitution permits and what it limits. Said Napolitano:

Basic human liberties are guaranteed in the Constitution. They can't even be taken away by the vote of the legislature, much less [by] the command of a governor or a mayor.

These executive orders look like orders and sound like orders. [But] they are just guidelines.

There cannot be a criminal sanction because they are at their root just the whim of those in power intended to enhance their power.... They are not valid expressions of constitutional [powers].



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